Motivation and Political Technique in the California Constitutional Convention 1878-79

by

Carl Brent Swisher, Ph.D.

Instructor in Government, Columbia University

POMONA COLLEGE
Claremont, California

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Introduction

MUCH of the explanation of social and political phenomena lies in the field of motivation. Constitutional history needs to be studied in this light, though it is admittedly difficult to pursue explanation in this direction. Motives are exceedingly mingled and those who participate in affairs are not often cognizant of, or capable of defining their own motivation, even were they willing to do so. The ability of man to identify the public welfare with his own desires and to rationalize the latter in terms of the former is almost unlimited, and the process is so ingenious and so subtle that one may be unaware of it even when indulging in it. Yet to the degree, however small, that man is master of the event, motive is of prime concern in understanding political and constitutional development. The analysis of motivation and the techniques employed to give realization to the desires embodied therein is the task of this study. With it there is also the effort to appreciate the great life currents which bear men on to their destiny. To the editor it seems that Dr. Swisher has manifested both insight and skill in dealing with the material presented by the California Constitutional Convention of 1878-'79.

Moreover, this monograph is timely in appearance and interest. The legislature of California has authorized and Governor Young has appointed a commission to study the problem of constitutional revision and submit recommendations. This commission is now at work. It represents many of the dominant forces and interests now active in the life of the commonwealth. Dr. Swisher's present work will provide the reader with perspective and generate insight into the life process by which constitutions come into being. Experience, knowledge, and reflection may become the more readily available for appraising the work of the commission and any developments which may eventuate from its activities.

Sociologists interpret the state, and the controls established in society through it, in terms of competing interest groups. The processes recorded in this monograph support this interpretation but there is added the significant factor of human personalities, their interplay with each other and with the times and conditions in which they were involved. It is important to note that political science as represented by this study is not content to inquire into legal and historical records alone, but cautiously reaches out in its search for explanation into the areas of investigation indicated by economics, sociology and psychology.

This monograph does not stand alone. It is one of a series projected with a view to surveying the political experience and constitutional history of the state of California. Originally developed by the author as a thesis in his program for the Master of Arts degree while at Pomona College, it has since been revised and re-written.

In the meantime an allied monographic study dealing with *Administrative Reorganization in California: a tentative program for constitutional reorganization* by

Professor W. W. Mather of Chaffey Junior College, has been completed as a master's thesis in Claremont Colleges and published by Chaffey. It is my hope that other meritorious studies in the constitutional history of California may become available from time to time as competent students are willing to undertake them.

Acknowledgment is gratefully made of the critical and helpful suggestions of my colleague, Dr. E. M. Sait; of the work of my assistant, Mrs. Ruth Gunther Detzer, who prepared the index; and of the generous interest of Mr. A. G. McKenna whose continuing support has helped to make possible the publication of the series.

RUSSELL M. STORY.

Claremont, California.
July 23, 1930.

CHAPTER I

BACKGROUND

THE motives which give impetus to action in any political situation are apt to be mixed and entangled to such an extent that only in a very general way can their nature be indicated, and some proportion of weight be assigned to each. The techniques which men use in adjusting themselves to each other in political situations and in influencing the activities of other men are also apt to be highly involved and difficult of distinction. Yet the drives to action in such situations, together with the techniques employed to gain specific ends, are fundamental parts of the political process. Some conception of them is fully as essential to the political scientist as is a knowledge of the broad and intricate subject—we might almost say the battle ground—of political theory, or the possession of data concerning the multifarious forms of governmental organization. The achievement of a complete and generally accepted understanding of these types of political phenomena may seem to be characterized by the same formidable lack of haste which has characterized the achievement of harmony in the field of political theory. It is safe to say that this understanding will not come until there have been great strides of development in all the social sciences. It is not to be achieved by *a priori* speculation, or at least not by that alone. It must await the perfection of more highly skilled techniques for measuring social phenomena, and the accumulation of numerous and varied quantities of material to which these techniques may be experimentally applied.

Our study, here, of motivation and political technique in the convention which framed the present written constitution of the State of California — it is the *present* constitution if the amendments later enacted may for the time be forgotten—is an example of the accumulation of such laboratory material. It is, in addition, an attempt to apply to the explanation of this material such limited criteria as are now available. Perhaps attention should be called to the fact that we are not interested merely in California, or in constitutional conventions, or even necessarily in those phenomena which are customarily regarded as political. The range is wider. The goal is the understanding of the motives which dominate men in determining their activities when they act together with other men, and the techniques which they use in making themselves effective. The selection of a California constitutional convention for laboratory material is incidental, and is due largely to the clarity with which in certain instances motives and techniques stand out.

It is a conservative statement of fact to say that conditions which led to the adoption of a new constitution in California on May 7, 1879, had been developing over the period of the preceding thirty years. The first constitution, itself one of the causes for the need of a new one, had

been adopted in 1849, and from it the curious investigator might go back to the other state conventions and to the federal constitution, from which sources most of its provisions had been borrowed. He might profitably go into the backgrounds of the members of that first convention, most of them newly-arrived immigrants from the various states and territories in the Union, who had joined in the mad rush which followed upon the discovery of gold at Sutter's Mill. But if we are to concentrate on the convention of 1879, space will not permit us to go deeply into the history of its predecessor. Indeed, the decade of the seventies will have to provide most of our material for background.

The second constitution was adopted by another generation than that which voted upon the first, and by a population that was more than seventeen times as large. In the latter part of 1849 there were probably not more than 50,000 people in the state. The census figures for 1880 gave a total of 864,694. The increase was most rapid in the early part of this period of approximately thirty years, but there was a growth of more than fifty per cent between 1870 and 1880. The greater part of the population was in San Francisco, in the Sacramento and San Joaquin river valleys, and in the mining regions mostly to the north and east. San Francisco in 1880 had 233,959 people, more than one fourth of the population of the state. Other cities had, in round numbers,

Oakland	34,500
Sacramento	21,400
San Jose	12,500
Los Angeles	11,200
Stockton	10,300
Vallejo	5,900
Alameda	5,700

No other city in the state had as many as five thousand people. Thus, nearly half the population of the state was distinctly rural, and much more of it was dependent upon the products of the rural districts. Los Angeles was the only city of importance in the southern part of the state, and it had only a third of the population of the county.

Within the population there were immigrants from Germany, England, Ireland, and other parts of Europe, as well as from British America and from Mexico. There were more than 70,000 Chinese. The white population was largely Nordic, and, at first glance, would seem to be fairly homogeneous. There are other factors, however, which must be considered quite as important as race in the analysis of the early Californians as a body politic. Relatively few of them were native to the state, and most of them had come long distances, amid great hardships, to try their fortunes in the fabulous country. They were a hardy, adventurous people, predominantly masculine, unconventional or quick to become so amid pioneer surroundings, who knew what they wanted and how to get it. Though they were quickly forced by circumstances to adopt rules regulating their conduct within certain limited areas they maintained the freedom and independence characteristic of pioneer life. A man must be able to take care of himself and his property. It is hardly surprising that the resident Spanish, Mexicans, and Indians, were often the prey of the acquisitive immigrants. Hence, the loss, in one way or another, of their vast domains. Neither is it surprising that, in time, among the immigrants themselves, some accumulated wealth and power at the expense of others, and found themselves the objects of the bitter hatred of their prey. Mute acqui-

escence was not a trait of the California pioneers. Hence much of the drama of our story. Hence, too, the clarity with which certain aspects of the political process are revealed.

The prevailing modes of earning a living played their usual important part in determining the attitudes of men toward their fellows and toward their political organization. It was the lure of precious metals that brought the eager hordes to California, and for a considerable period of time mining was the chief industry of the state. The output of the mines continued to increase until the decade of the seventies, when it ran along almost on a level.[1] The conditions of mining were changing, however. At first miners had worked alone or in small groups, using comparatively simple apparatus, and every man had a chance to share in the thrill and the profit of discovery. Now the work was beginning to be done on a large scale by mining corporations which used expensive apparatus, and employed individual workers under a wage system.[2] Instead of having the lure of wealth before them these workers had nothing to hope for but their wages, and nothing to lose but their jobs. It was a profound change in their way of living, and was accompanied by a corresponding change in their social attitudes.

Great masses of the people were coming to resort to stock market speculation to satisfy the spirit of adventure which had formerly been expressed in digging for gold. The trade in mining stocks became so heavy that in 1872 the old stock exchange was not able to accomodate all the brokers, and a new exchange board had to be organized. Great excitement prevailed at the time of the opening of the Consolidated Virginia mine, in 1874. "The aggregate value of the Comstock shares, as indicated by the quotations on the market, rose at the rate of a million dollars a day for nearly two months."[3] There were great fluctuations in the value of stocks, over short periods of time, and fortunes were made and lost at an amazing rate. The aggregate value of the stocks listed on the San Francisco boards one day in January, 1875, was, at the market rate, $284,000,000. One day in November of the same year it was $92,000,000, a drop of $192,000,000. The largest variation in any one month was $139,000,000, and the smallest $21,000,000.[4] In 1876 the San Francisco market was considered dull, but the sales amounted to $226,000,000.[5] 1877 was a year of catastrophe. In January the Consolidated Virginia suspended its dividend of $1,000,000 a month. Its market value dropped from $80,000,000 in 1875 to $10,000,000 at the end of 1877. The California mine declined at the same ratio.[6] J. S. Hittell speaks of the decline as a "shrinkage of $140,000,000 in the market value of two leading mines, nearly all of whose shares were owned in San Francisco, or nearly $1,000 on an average for every white adult in the city, and though a large majority had never owned any of these shares, all were affected indirectly, if not directly, by the decline."[7] This was the year prior to the date of the constitutional convention.

Though mining was at first the chief industry of the state, conditions had so changed by 1880 that the census reports showed the products of agriculture and manufacturing to be greater in value than the products of the mines.[8] There were thousands of acres of fertile land all ready

for cultivation, all ready except for the lack of water. In some years there was enough rainfall to produce crops, and many immigrants, gambling on the weather, established themselves on ranches. Some were able to subsist by raising cattle or sheep, when there was not enough rain for the growing crops. The vast acreages which they took up were in time to be protected against droughts by irrigation, but at that time irrigation was often prohibitively difficult and expensive. As examples of the turns of fortune, in 1868 there was a great influx of settlers into the San Joaquin valley. The succeeding three years were so dry that many of the settlers had to leave.[9] In 1872 there was a heavy rainfall, and 20,000,000 bushels of wheat were harvested in the Sacramento-San Joaquin valleys.[10] There was scanty rainfall in the winter of 1876-7, and farmers suffered greatly the following year. Thousands of cattle and sheep died of starvation.[11] In Southern California the sheep industry was nearly destroyed.[12] In the San Joaquin valley many farmers had not food enough to last another season.[13] As a result of these hardships farmers throughout the state were deeply in debt, and it is not surprising that in the constitutional convention we find them deeply exercised over the subject of the taxation of mortgages.

The total value of manufactured products in California was given by the census of 1880 as $116,218,973, about two thirds of which belonged to San Francisco. The principal industries were slaughtering and meat packing, sugar and molasses, boots and shoes, foundry and machine shop products, men's clothing, and tobacco and cigars. It was recognized by many that farming in the state was far less prosperous than it might be. Laborers had not become numerous as yet, and wages were high. There was a lack of water power in the towns and the cost of fresh water was high. The cost of transportation was high, and harbor frontage was hard to get.[14] In San Francisco the manufactures were in the hands of a comparatively few capitalists.

> Thus the Rolling Mills, the Golden City Chemical and Assay Works, and the Powder Mills belong to not more than thirty stockholders. The three woolen mills have not more than a dozen stockholders, though with a capital of $3,000,000, and producing about $2,000,000 worth of goods annually. Eight millions of the manufacturing stocks of the city are said to be owned by not more than fifty persons.[15]

The control of the manufactures of the state by a comparatively small group was significant, in the light of the struggle between capital and labor which was to follow.

But it was not alone the manufactures that were in the hands of a few men. The railroad system of the state was for the most part dominated by a group of five men who had garnered great wealth from their projects.[16] Much of the land of the state was monopolized by a few great holders. Wealth that existed in the form of precious metals or in mining stocks likewise tended to centralize. Two barkeepers from San Francisco bought most of the stock in the Consolidated Virginia mine, paid heavy assessments on it, and then saw their property rise in value to the amount of about $150,000,000.[17] Many

others had accumulated fortunes in short periods of time. Hittell said of San Francisco that it probably had more millionaires and fewer paupers than any other city of its size,[18] yet the distribution was anything but equal. The time was coming when this fact would lend zeal to a battle cry.

Banks were prosperous until the middle of the decade of the seventies. In 1875 the Bank of California, in San Francisco, closed its doors, as a result of conditions arising from the misuse of funds. A panic ensued, and many other banks were compelled to close at least temporarily. The panic forced investigations, and it was revealed that bad business methods or the misuse of funds had prevailed widely. Popular agitation resulted in the appointment of a board of bank commissioners in 1878, which investigated and closed the doors of other banks which until this time had not been under suspicion.[19] About a dozen bank failures occurred in the state between 1875 and 1880.[20]

Contemporary with the collapse of mining stocks and financial difficulties in the field of banking, the records show an increasing number of business failures from 1875 to 1878.[21] At the beginning of 1875 it was estimated that there were one hundred millionaires in California. In 1877 half that number were no longer millionaires, and a score were at or near bankruptcy. This turn in the tide of prosperity was especially hard on the laboring classes, for money was withdrawn from industry, business activities grew stagnant, and widespread unemployment followed.[22] Large numbers of men were turned loose, without income and without employment, without highly intelligent political and social ideas, too, to aid in the development of agitation for political and social change.

In many of its aspects the political organization of the state was so like that of most states in the Union during that period that little time need be taken for describing it. The two major parties had their separate organizations which struggled for power, prestige, and spoils, but which were strikingly similar in the principles which they enunciated. Mining and its related activities had thus far been so profitable that few men of ability had been active in political life, and the struggle for office was carried on among men of mediocre talent and often of doubtful integrity. The legislators were of especially low caliber. J. S. Hittell said that the governors had usually been men without any very high moral or intellectual character, but that they were so far above the predominant level of the legislatures, and were held in such direct and undivided responsibility by public opinion that the veto power entrusted to them had been of inestimable value in the protection of the community against legislative fraud and recklessness.[23] As long as prosperity continued there was relatively little sincere agitation for the improvement of general political conditions.

The first evidence of a change came with the election of most of the ticket of an independent party in 1873. The party proposed to curb ring control of the legislature, and to protect the interests of individuals.[24] The voting power back of it came mostly from farmers, who had a number of serious grievances, and who, through farmers' clubs and the granger movement, were beginning to learn to

organize in their own interest. The party effected few reforms, and in the election of 1875 succeeded only in splitting the Republican party and bringing about the choice of a Democratic administration.[25] The experience was fruitful, however, in that it taught the farmers that they were not wholly powerless in a political situation. It turned out that they were achieving excellent training for participation in the constitutional convention.

The outstanding movement which preceded the convention, however, was the organization of the workingmen's party. So important was the part played by this party that its origin merits analysis in some detail. The unemployed and impecunious workers who suffered from the general depression of the latter half of the decade of the seventies made embittered and venomous search for the cause of their misfortunes. Over-simplifying the state of affairs considerably, they gave expression to their discontent through violent hostility to the Chinese laborers in the state, who worked for lower wages than their white competitors, and to the capitalists who employed the Orientals. Their aims were vigorously expressed in the slogan, "The Chinese must go." From the beginning of the party organization until its dissolution antagonism to the Chinese provided a basis of unity. Stored-up hatred was vented upon them by burning their laundries, destroying their property wherever it was to be found, and driving them from their homes. However laboring men might disagree on other points there was one cause to which they subscribed in common—"The Chinese must go!" The raids in San Francisco in the summer of 1877, which were quelled by the committee of safety, did not end the plotting against the Orientals. Frequent meetings were held on the sand lots, across from the new city hall in San Francisco, the purpose of which the San Francisco *Alta* declared to be "to influence the passions of workingmen up to the sticking point of riot, sedition, and insurrection, and at last the culminating crime against the sovereignty of the state —treason itself."[26] It was planned to cow the press to neutrality, to extirpate the Chinese from the coast, and to make a redistribution of property for the benefit of those who had been deprived of their rightful share. The Chinese provided the direct point of attack, but in addition the conception was always prevalent that the men who in one field or another had accumulated great wealth should be compelled to disgorge for the benefit of those who had been less fortunate.

The first of the sand lot meetings was held Sunday, September 23, 1877, about seven hundred workingmen being present. On October 5th the first permanent organization was formed, with Dennis Kearney as president, J. G. Day vice-president, and H. L. Knight secretary. A set of principles was drawn up which stated that the object of the association was to unite all poor and workingmen into one political party for defense against the dangerous encroachments of capital on the happiness of the people and the liberties of the country. The government was to be wrested from the hands of the rich and placed in those of the people, where it belonged. The party would rid the country of Chinese labor. It would destroy land monopoly by laws which would make it impossible. "We

propose to destroy the great money power of the rich by a system of taxation that will make great wealth impossible in the future." The poor and unfortunate were to be provided for. None but competent workingmen were to be elected to any office. "The rich have ruled us until they have ruined us. We will now take our affairs into our own hands. The republic must and shall be preserved, and only workingmen will do it. Our shoddy aristocrats want an emperor and a standing army to shoot down the people." When the party had gained sufficient strength it would "wait upon all who employ Chinese and ask for their discharge, and it will mark as public enemies those who refuse to comply with their request." As a study in the political process it is worthy of note that the workingmen were sublimely confident that their own interests —and not those of the capitalists or the Chinese—were the interests of the public.

The declaration closed with the following warning:

> This party will exhaust all peaceable means of attaining its ends; but it will not be denied justice, when it has the power to enforce it. It will encourage no riot or outrage, but it will not volunteer to repress, or put down, or arrest, or prosecute the hungry and impatient, who manifest their hatred of the Chinaman by a crusade against "John," or those who employ him. Let those who raise the storm by their selfishness suppress it themselves. If they dare raise the devil, let them meet him face to face. We will not help them.[27]

Undoubtedly much of the effectiveness and the type of effectiveness which the party had was due to its leader, Dennis Kearney. Kearney was an Irishman, thirty-one years of age. He had been a sailor, and had come to San Francisco as an officer on the ship which brought him. Here he changed his occupation to that of drayman. He became a naturalized citizen in July, 1876.[28] He had little of what was called education, but he had the capacity for leading men which is prominent in people of his race. His type of approach can best be learned by examining the speeches which he made, remembering that they were delivered with all the persuasive emotional power of an Irish crusader. The following manifesto, signed by Kearney and Knight and published in the San Francisco *Chronicle,* is an attempt to justify, explain, and advertise the newly-organized party:

> We made no secret of our intentions. We make none. Before you and before the world we declare that white men, and women, and boys, and girls, cannot live as the people of the great republic should and compete with the single Chinese Coolie in the labor market. We declare that we cannot hope to drive the Chinaman away by working cheaper than he does. None but an enemy would expect it of us; none but an idiot could hope for success; none but a degraded coward and slave would make the effort. To an American, death is preferable to life on a par with the Chinaman. What then is left to us? Our votes! We can organize. We can vote our friends into all the offices of the state. We can send our representatives to Washington. We can use all legiti-

mate means to convince our countrymen of our misfortunes and ask them to vote the moon-eyed nuisance out of the country. But this may fail. Congress, as you have seen, has often been manipulated by thieves, peculators, land grabbers, bloated bondholders—a golden lobby dictating its proceedings. Our own legislature is little better. The rich rule them by bribes. The rich rule the country by fraud and cunning; and we say that fraud and cunning shall not rule us. We call upon our fellow workingmen to show their hands, to cast their ballots aright and to elect the men of their choice. We declare to them that when they have shown their will that "John" should leave our shores, and that will shall be thwarted by fraud or cash, by bribery and corruption, it will be right for them to take their own affairs into their own hands and meet fraud with force. Is this treason? Then make the most of it. Treason is better than to labor beside a Chinese slave. . . . The reign of bloated knaves is over. The people are about to take their own affairs into their own hands, and they will not be stayed by either "Citizen," vigilantes, state militia, nor United States troops. The people make these things, and can set them aside. The American citizen has a right to express himself as he pleases, as he thinks, and to arm himself as he will, and when organized and strong enough, who shall make him afraid? There is none.[29]

Prominent and wealthy men of San Francisco were appropriating an exclusive residence district on a hill which, because of the class of people living there, came to be known as "Nob Hill." Leland Stanford and Charles Crocker, directors of the Central Pacific railroad had homes there. Crocker wanted the property of a man named Yung, but Yung refused to sell. Thereupon Crocker built a high board fence around Yung's property. This action gave stimulus to the zeal of the workingmen. A meeting was held on "Nob Hill" and inflamatory speeches were made against the capitalists. Kearney was said to have proclaimed that he would give the Central Pacific just three months to discharge their Chinamen. If they refused, Stanford and his crowd would have to take the consequences. He gave Crocker one month to take down his board fence. If he did not do it—"I will lead the workingmen up there and tear it down, and give Crocker the worst beating with sticks that a man ever got."[30]

In a meeting of the party club of the second ward—the workingmen were now organized into ward clubs, after the idea of Jacobin clubs in the French Revolution—Kearney declared that "Men and their families are today literally starving in our city, and the men who have brought them to it are laughing at it in their sleeves." J. J. Day proclaimed that "The young people will rise in this anti-Chinese movement, and deluge this city in blood, if not entirely destroy this city. We will show them that the days of the capitalists are ended." Doctor O'Donnell, a picturesque character who was to be a delegate to the constitutional convention, declared that labor could seize the city and hold it in spite of Hell. The Chinese would be driven out, but they would not be attacked so much as those who employed

them.[31] Kearney advised every workingman to own a musket and a hundred rounds of ammunition. " I can predict for you a glorious future, when you will get three dollars a day for eight hours work." Stanford had said that the leaders of the agitators could be bought for $50,000. Kearney moved that any leader who accepted a bribe should be hanged.[32]

Kearney, Knight, Day, and others were arrested for the violence of their utterances. There was nothing of the spirit of proud martyrdom about them. They sent a letter to the mayor of San Francisco saying that they had been incorrectly reported. They were anxious for the peace of society, and were "willing to submit to any wise measure to allay the existing excitement." "We do not propose to hold any more outdoor meetings, or to tolerate any further use of incendiary language, and sincerely hope that our friends will, under all circumstances, obey the officers of the law, and uphold the peace of the city."[33] Had they waited a little longer they could have avoided the humiliation of writing the letter, for the ordinance under which they were held was declared invalid, and they were released. Soon they were back at the sand lots, a little more careful than before, but still proclaiming that the Chinese must go.[34] Kearney said that if the authorities did not permit them to have open meetings they would form secret societies and carry on the agitation. He denounced the gag laws, and issued threats against the Chinese, capitalists, *et cetera*.[35]

Kearney and some of his confederates set out on a tour of the state, traveling as evangelists of the new political party. They were well received by laborers in the larger cities, and passed on their enthusiasm to newly organized groups. The farmers were not favorably impressed by Kearney's type of agitation. The leaders returned to San Francisco to tell of the great work which they had been doing. They expected great things in the future, and in San Francisco would have a thousand drilled workingmen armed with Springfield rifles in less than six months.[36]

Early in January, 1878, Kearney and others were again behind bars for rioting near the homes of Stanford and Crocker, and for conspiracy against the Chinese in the sand lot meetings.[37] With the leaders in jail the mayor sought to quell the agitation by issuing a proclamation declaring to be unlawful meetings held "to create disturbances . . . in which public offenses may be committed." But the prosecution failed to get convictions against the leaders of either charge, and February 3rd saw them back at the sand lots before a crowd of from eight to ten thousand people. On this occasion a committee from the legislature, which was then in session in Sacramento, was in San Francisco to make a study of the labor situation. The committee sat on the platform while Kearney told of the sweeping success of the workingmen's movement. He proclaimed that the Chinese must go. There would be a riot at the next election. The Sacramento workingmen had formerly been run by the "servile and vicious tool of the railroad company," but now they were "free from the infamous leaders that tried in vain to manipulate them and pull the wool over their eyes, and use them as a lever." At Stockton and San Jose the workingmen were with the movement.[38]

What was perhaps the climax of the situation came March 16th. The legislature was contemplating the purchase of the works of the Spring Valley Water Company at the enormous and exorbitant price of $15,000,000, and on poor terms. The property owners of San Francisco came together in a meeting to protest against the purchase. Kearney came in, forced his way to the platform and took charge of the meeting, declaring that only he could call a meeting in San Francisco for the protection of the rights of the people. Enough of his own crowd were in the audience to enable him to keep control and determine who should be allowed to speak, and when in a free-for-all struggle Kearney was once crowded from the platform the police stood by him, and provided the evidence upon which his assailant was later tried for assault and battery. Kearney was able to keep control of the meeting until it was completely broken up, and himself appointed the committee that was to take action in the name of the citizens of San Francisco, giving to himself, as a matter of course, the position of chairman.[39] The committee met three days later, and after typical Kearneyite deliberations voted to send five men to Sacramento to prevent the passage of the bill. Kearney, to show his independence, named six. Clitus Barbour, a member of the committee, who had been attorney for Kearney in the recent trials and who was to be a member of the constitutional convention, announced a series of resolutions which he would write out and send to the Spring Valley Water Company. They were as follows:[40]

1. Call off your dogs.
2. Take down your corruption fund.
3. Dismiss your lobby.
4. Reduce your water rates.

A contemporary sensation was the case of Senator Bones, of Alameda. He had been elected on the workingmen's ticket to fill out an unexpired term in the state senate. He was nominated on a platform which advocated the hanging of traitors to the party. In the legislature, however, he failed to do in all respects as his party demanded, and there was a cry for his resignation or for his punishment according to the platform. It was proposed that a convention from the clubs should hold a trial, and it was inferred that his execution would be ordered. He was hanged in effigy in Sacramento March 31st. He appealed to the senate for protection, showing a letter threatening him with death if he did not resign. Commenting on the situation the Sacramento *Record-Union* said:

> So far has the surrender of American principles of government gone that the ignorant roughs who pin their faith upon Kearney really have come to believe that they have a perfect right to hang Senator Bones; and what is even more serious, there are serious indications that they will endeavor to do so if they get the opportunity.

Newspapers throughout the state revealed a widespread alarm at these conditions of excited lawlessness. The Oakland *Democrat* warned of "Danger Ahead":

> What does it all presage? Violence. Simply that, and nothing less. Admit that these men are ignorant, many of them, and do not mean what they say. So much the worse. The seeds of disorder sown in ignorant minds

propagate with most wonderful rapidity. It is seed sown in appropriate soil. But for the want of intelligence there would be no danger. But such appeals may not safely be made to the elements gathered to hear them. Already some clubs have taken action, and others are discussing the proposition, looking to the immediate transformation of the clubs into military organizations. Why? For what purpose? The answer comes from the talk on the streets: "The government is busy with affairs east of the mountains. We must take care of ourselves."

An outbreak of the character indicated would find its parallel only in the French Revolution, when the streets of Paris ran with blood, and millions of property was destroyed.

Let good citizens, true patriots, lovers of law and order, and all who have the safety and welfare of the community at heart be warned in time. *There is danger ahead.*[42]

Elsewhere the same paper quoted Kearney as saying: "We must not only say it (hemp) but use it." "What will the folks at Washington think if we cry hemp and don't use it?" This was not buncombe or figure of speech, the *Democrat* declared. It was deliberately planned to result in physical violence. The Oakland *Times* was equally earnest in its warnings. The men involved had little at stake. They could afford a riot, and could profit by it.[43] The Los Angeles *Express* marveled that Kearney had so bull-dozed San Francisco that its citizens seemed to feel that they held their lives at his sweet pleasure.[44] Another paper remarked that the alternative for the office holder was no longer, "Obey or resign," but "Resign or be hanged." "We are making progress in political economy. A few more lessons from the sand lots and we shall be able to rival Mexico or Haiti."[45] So the comments ran, matched in newspapers all over the state.

Almost equally profuse were comments on the startling decline of property values in San Francisco and in other parts of the state. Kearneyism was given as the cause. One quotation will serve as a suggestion as to what the many were like:

> Mr. Dennis Kearney is making more poor folks, throwing more men out of work, causing more misery and destitution, and doing more to depreciate property and drive capital from the city, in one week, than could have resulted from the lifelong presence of all the coolies of the six companies.[45]

Here we have the summary of the general situation which prevailed in California in the years immediately preceding the meeting of the constitutional convention. There were the gradual change in the conditions of mining; the growing relative importance of agriculture and industry; the acquisition of great property holdings by the fortunate few; the misfortunes of the farmers; the era of stock speculation and the collapse; the slump in business, and widespread unemployment; the holding of political offices by mediocre men; the independent party

movement, sponsored chiefly by the farmers; and, finally, the organization of the radical workingmen's party. All these factors, some of them yet to be illustrated in greater detail, were important in bringing about the calling of the constitutional convention, and in making the convention what it was.

CHAPTER II

THE CHOICE OF DELEGATES

IT had long been recognized that in many ways the constitution adopted in 1849 for a thinly settled mining state of fifty thousand people was inadequate for the needs of later times. Popular votes had been taken on the question of calling a constitutional convention, but thus far they had failed. In 1857, and again in 1859, more votes were cast for a convention than against it, but the proposition lost due to the fact that many people who went to the polls did not vote on it at all, while the constitution provided that for the call it was necessary to have a majority of the votes cast at the election. Attempts to get a convention continued to be made. The legislature which was dominated by the independent party, in 1873-74, recommended that a convention be called, but again the project failed.

Popular lethargy and indifference to the subject undoubtedly bore heavy responsibility for the lack of action. It was charged, too, and probably not without cause, that the great moneyed interests and corporations had vigorously opposed such action for many years.[1] The party organizations of the state were said to be under the sway of the moneyed interests. The Democratic state convention of 1875 favored the calling of a constitutional convention "as the only mode of creating a system of government at once harmonious and efficient."[2] After the convention, pressure was brought to bear on the Democratic state central committee to oppose the measure, and a prominent railroad lawyer showed how it could be done effectively, yet with a semblance of regularity.[3] What happened is described as follows:

> The calling of a convention to revise the constitution was defeated at the last general election by a trick. Notwithstanding the Democratic state convention had resolved in favor of a call, the central committee had all the tickets printed with "For a Convention," and "Against a Convention." This was done by the advice of S. M. Wilson, the railroad attorney, who afterwards justified himself in giving it on the grounds that *he* did not want a convention. The result was that the great mass of the tickets were voted with the two neutralizing propositions, and the call was defeated.[4]

The legislature of 1875-76 again recommended a vote on the proposition.[5] Probably because of the increasing unsettlement of conditions throughout the state at the time, the interest in government reform was greater than in previous years. A warning was issued to voters that an attempt would be made by the Democrats to defeat the project by the same trick that had been used before.[6] At the election which was held September 5, 1877, the majority for the convention constituted a majority of all the votes cast at the election. It was charged that again the people were hoodwinked, this time by those who wanted a convention, and who had arranged that "For a Convention" should be printed on the ballots

of one of the political parties.[7] It seems certain, at any rate, that although popular discontent was increasing and people were beginning to look for panaceas for their ills, there was little intelligent consideration given to the question of what might be legitimately expected to be achieved by revision of the fundamental law of the state.

The next essential step was for the legislature to make provision for the convention. A bill passed the assembly February 21, 1878.[8] It provided for one hundred and twenty delegates, three to be selected from each senatorial district. Some newspapers, notably the Sacramento *Record-Union,* had urged the provision for some delegates to represent the state at large, but there was vigorous disapproval of such a plan.[9] It was believed that were the selection of a considerable number of delegates left to the state at large, and if they were to be nominated in a state convention, professional politicians would get control of the proceedings, and bring about the selection of a large number of delegates of their own type to the constitutional convention. An expense fund of $150,000 was provided. The delegates were to receive eight dollars a day for one hundred days.

The bill came before the senate, and passed, but with important changes. A provision was made for the election of thirty-two additional delegates, to be chosen at large. The expense fund was cut to $100,000, and the delegates were to serve without pay.[10] The changes caused much criticism. It was said that the senate feared the results of a constitutional convention, though it dared not attack it openly. It hoped so to juggle the provisions of the enabling act that the convention would not be held.[11] The bill was reconsidered, however, and compensation was voted to each delegate at $500 for the session. Senators claimed that their only desire was to secure economy of expenditure for the state, yet critics pointed out that by adding thirty-two delegates at large there was incurred an additional cost of $16,000 for compensation to the delegates, and $2000 for mileage. In conference the rates were changed to eight dollars a day and mileage, the same as the pay of legislators, but payments were not to be made for longer than one hundred days.[12] The provision for the delegates-at-large was retained. The conference report was accepted by both houses, and the bill was signed by Governor Irwin April 1, 1878.

As soon as the act was passed the conservative press of the state proclaimed the issue on which the delegates would be chosen. Kearneyism must be defeated. Said the San Francisco *Alta:*

> The Republican and Democratic state central committees should meet together and agree to leave the selection of delegates to the constitutional convention to a committee of representative men from each ward, chosen without regard to politics; and the delegates then selected to be presented as the Citizen's ticket, on which everybody opposed to the reign of Kearney could unite.[13]

Papers throughout the state echoed the sentiment that partisanship must be discarded in choosing the framers of the new constitution.[14] Communism was denounced as a scourge. So vigorous was the call for united action that the radical group took fright. "Unless you awake," said a speaker at the sand lots, "the constitutional convention will be packed against you by property-holders. There will be a property qualification for voters."[15] The San Francisco *Chronicle*

took for a time something of a middle ground, favoring the establishment of an independent party to elect reform delegates to the convention. It was strongly anti-capitalist in sentiment, and was eventually driven to the support of the workingmen's party. The *Alta* continued its attacks upon Kearneyism and its insistence that the Democrats and Republicans unite to defeat the action of the radical group. If they did not unite, it said, the Kearney party would undoubtedly carry more than half the state, and it would be only a proper recognition of Kearney's genius if they made him president of the convention.[16] The attitudes of the press indicated, accurately, that people of all viewpoints and interests were awakening from their political lethargy, and were getting ready to defend themselves through political action. The utilization of the press for propaganda purposes was proving to be a much used and a most effective technique for consolidating the people into a few distinct groups.

The pressure of public opinion on the state organizations of the political parties was such that the Democratic and Republican central committees met in the Palace Hotel, San Francisco, April 24th. They held their sessions separately, however, and the pressure was not strong enough to bring about a fusion. Both committees adjourned after having made separate and divergent recommendations as to methods of selecting delegates on a non-partisan basis.[17] The Republicans favored the holding of district conventions for the nomination of the thirty-two delegates-at-large, eight delegates to be chosen from each congressional district, while the Democrats recommended a non-partisan state convention to be held at Sacramento, May 22nd, for the same purpose. The *Alta* could find cause for rejoicing only in the fact that the committees had not decided to nominate on strict party lines. It favored nominations by districts rather than by a state convention, because Kearney might send to the latter a delegation large enough to control the meeting.[18] Whether or not the editor believed thus strongly in the power of Kearney, the action of the latter in seizing control of the meeting of citizens at Platt's Hall on March 16th, and completely dominating it,[19] was still fresh enough in the minds of the people to have its effect. The thirty-two delegates-at-large constituted a prize well worth saving from capture by the radicals, the conservatives thought, even at the expense of the temporary loss of prestige by the established political organizations.

In San Francisco the anti-radical group was soon strong enough to arrange for the non-partisan nomination of delegates, without the aid of the state central committees. The following notice appeared in the *Alta* of May 5th:

> The Republican committee of San Francisco, after a conference with the executive committee of the state central committee, have issued the following circular calling for a meeting of a non-partisan convention for the nomination of delegates to the constitutional convention.

Then followed a list of the names of the twenty-five men who would constitute the convention. The *Alta* commented that thirteen of these men were Republicans and twelve were Democrats—as nearly as possible an equal division along party lines.

For a study of probable motivation as to the type of delegates these men would choose, however, certain other points are more important than their party affiliation. Something of their occupations,

interests, viewpoints and associations is revealed by the following classification of twenty-four of the twenty-five men:

10 merchants
2 capitalists
1 lawyer
1 bank president
1 president of an insurance company
1 insurance agent
1 superintendent of a railway company
1 brewer
1 printer
1 steamship agent
1 stevedore
1 brass founder
1 auctioneer

Such a group is of necessity interested first of all in the protection of investments and in the success of industry and business, and is likely to see the welfare of the community as depending wholly or in large part on that protection and success. Thus most of these twenty-four men, in their basic assumptions concerning public welfare, stood opposed to the workingmen, who saw the good of society first of all in the immediate prosperity of those who labor, and looked with jealousy and hatred at those who had accumulated great wealth. Though each group *might* have arisen to the point of seeing the ultimate good of each in the ultimate good of all, it is a fair assumption that they would not do so, and the evidence is to the effect that they did not.

Following the list of names the quotation in the *Alta* continued:

> The undersigned, citizens and voters of the City and County of San Francisco, believing it for the interest of the state that good and able men should be selected to represent the city and state in the constitutional convention, and that such elections can be best made by a non-partisan convention, hereby request you to meet in the court room of the nineteenth judicial district, Kearney Street, on the 8th of May, 1878, at 8:00 P. M., to nominate thirty-one delegates to be voted for at the election to be held on the 19th day of June, 1878, to represent the City and County in the convention, and also eight delegates-at-large for the first congressional district.

The committee met as requested, with some slight change in personnel, and proceeded to the nomination of eight delegates-at-large for the first congressional district. Four Republicans and four Democrats were selected. It was a delegation of lawyers, with the exception of one man who was president of a corporation.[20] A few days later delegates from the senatorial districts were nominated. Without analyzing this group at the present time, the nature of its personnel may perhaps be indicated by the fact that Kearney described the non-partisan ticket as "composed of thieves, villainous and murderous bloodsuckers, a band of criminals and robbers."[21] He admitted that there were, however, a few good men among them. M. M. Estee, a nominee for delegate-at-large, was popular with the workingmen, and would receive heavy support from the workingmen in the election.

Delegates-at-large from the second and third congressional districts were nominated at non-partisan conventions at Sacramento and Marysville, and were likewise able and conservative men who were closely allied with the propertied interests of the state. They were men of business and legal experience who were used to being in positions of prestige and influ-

ence. They were experienced in shrewd dealings with other men, and would be likely to make their influence strongly felt in a political convention. They were in sharp contrast with the group of uneducated, outspokenly dogmatic and highly emotional men who were being nominated by workingmen in San Francisco, not only in ability to employ political techniques, but also in the political ends which they wanted to achieve. The struggle was coming more and more to be a clash between the class-conscious groups of capital and labor.

In the meantime delegates from the smaller units in the state were being nominated by local conventions. Here was representation of a different type of interest. It was property representation, but for the most part it was farm property, as contrasted with corporation property, the ownership and control of which tended to concentrate in San Francisco. In the rural communities and in the small towns which were dependent upon the farming districts for their prosperity the granger group took a prominent part in the selection of delegates and in drafting their instructions. An example of the instructions given was the platform of the convention held at Biggs, in Butte County, on May 11th, which was anti-Chinese, opposed to the taxation of growing crops, advocated the taxation of mortgages, bonds, etc., and the equal assessment of lands in large or small tracts at their cash value.[22] Again, the Alameda fusion convention declared for the discouragement of land monopoly, and for the exemption of property from taxation to the amount of five hundred dollars.[23] The Sacramento *Bee* declared on May 22nd that every county convention thus far held had declared against land and water monopoly. This subject was one of the major issues, in the minds of many people. The Sacramento county convention, which was held on May 23rd, made no declaration on the subject, however. James McClatchy, proprietor of the *Bee,* advertised in the columns of his paper that he was a candidate for the position of delegate to the convention, and stressed the fact that he stood for the abolition of land and water monopoly, for the conservation of water for the use of all, and for the exemption from taxation of property to the amount of $1000.[24] Sacramento county as a whole was not too favorable to the liberals, there being one element that was very radical and another that was conservative, and McClatchy failed to secure the coveted nomination.

Three of the four congressional districts had selected non-partisan candidates by nominating conventions. There was much confusion in the matter, however. The central committee of the Democratic party at its April meeting in San Francisco had recommended the holding of a state nominating convention at Sacramento on May 20th. Some of the counties in their local nominating conventions selected delegates to this state convention as well. It met at Sacramento on the date named. Three-fourths of its work had already been done by the district conventions. This state convention could only choose between putting still another ticket in the field, thus defeating the ends which it was trying to serve, and endorsing the candidates already nominated by the districts. It chose to endorse these nominees, and recommended that the fourth congressional district hold a nominating convention at San Jose, May 30th, in order that the non-partisan ticket of delegates-at-large might be complete.[25] The state convention then adjourned, leaving the

field clear for the non-partisan candidates already chosen.

The Sacramento *Bee* denounced the convention for endorsing the conservative group of delegates already nominated, and for failing to publish a platform taking a stand on land and water monopoly. However, it could hardly have been expected to take action that would probably have secured the defeat of its own candidates and of those already nominated, leaving the field to the dreaded radical groups. As for preparing a platform, the non-partisans were already in a precarious position, for in their declarations they had at once to appeal to the conservative capitalistic interests of the state, and to the small farmers who hated the land monopolists, and who were in positions of economic subservience to capitalists in some form or other, and who for this or other reasons were hostile to capitalists and to corporations. It was hard for a candidate to make a positive declaration of any kind that did not promise to make as many enemies as friends. The candidates from capitalist centers where the land problem was not particularly acute felt safe in attacking land monopoly in a general way,[26] but for the most part critical issues of this kind were avoided by the non-partisans, and voters were left to speculate on the enthusiasm with which candidates, if elected, would carry out the mandates of the local district conventions.

In spite of attempts to secure temporarily the complete obliteration of party lines these lines continued to appear. In some instances it was due to the fact that old party leaders feared the loss of power and prestige if their organizations were temporarily shelved while important political problems were being dealt with. In other cases it seems likely that party subordinates used the occasion to get into the party saddle while their erstwhile leaders were engaged in a non-partisan project. There were voters, too, with whom the party label was highly significant, and who were unwilling to put it aside even in the face of the dangers of Kearneyism. In San Francisco both Democrats and Republicans put tickets in the field. The Grass Valley *Union* scored the Democratic executive committee for "putting in the field bogus tickets for the second and third congressional districts, in imitation of some unknown parties at Merced, who got up a bogus ticket for the fourth district." Scattered nominations were made by both parties throughout the state. In the matter of delegates-at-large it seems improbable that there could have been hope of success. It was asserted by Republicans that the workingmen had come chiefly from the Democratic party, and that a solid republican vote could carry the convention.[27] However, a solid party vote in the midst of the existing situation was not to be expected. Property owners, whether interested in great corporations, in merchandise, or in farming, saw such danger in the threatened control of Kearney and his party that they were willing to combine in order to avoid it, and for a large per cent of the population party affiliation temporarily lost its hold. Groups ordinarily hostile were united in the face of a common enemy, an enemy that threatened far more danger than the accepted dogmas of an orthodox American political party.

Throughout the period from the passing of the enabling act to the election on June 19th the conservative press of the larger cities[28] proclaimed day after day the awful possibilities of the siege of communism, and the press of the interior re-echoed these sentiments. It was early to

be seen that victory lay between the non-partisan and the workingmen tickets. The leaders who carried out the independent Republican and Democratic movements were severely criticised for their refusal to forget partisanship in the face of the existing crisis. Still, there was no lack of insight in the statements of some newspapers that the non-partisan movement was itself partisan, and was a fusion to prevent reform.[29] These papers were watching eagerly for an opportunity to lead a reform movement outside the non-partisan group, while avoiding the roughness of the leaders of the workingmen,[30] but no such opportunity was afforded. The protest of the San Francisco *Examiner* at the selection of too many lawyers and too few farmers, miners, manufacturers, mechanics, and also Jews, was of no avail in changing the trend of events.[31] Some good men from these classes were sure to be chosen, but they were allied with newly improvised parties, one of which was basically conservative and the other disturbingly radical.

Along with the other parties the workingmen were selecting their candidates, but all did not go well with them. It had been shown repeatedly that not all workingmen in the state, whatever their grievances, were in sympathy with Kearneyism. They were eager for reform, but they wanted to achieve it in an orderly fashion, without the radicalism of Kearney. There was also jealousy among the leaders. A quarrel over the military organization of the wards took place, and Kearney, meeting opposition, defied the executive committee of the party.[32] He was expelled from his position of leadership. The county committee appealed to the wards for their support in the matter of his deposition:

> We, therefore, call on all loyal clubs to sustain us in our efforts to check the alarming tendency of oppressive capital or Kearneyism, believing both extremes to be mischievous, and tending to defeat the objects of just and equitable government, which patriotic men should ever keep in view. We would likewise urge upon the executive committee to at once depose the man who proves himself a reckless tyrant, and call, at once, a meeting of all good citizens who desire to throw off all the shackles of all corrupt parties, and at once put men in the field as candidates who are pledged to our principles, and who will bring honor to our cause, justice to our people, and good will to our country.[33]

Kearney was deposed, but at the ensuing party convention which was held in San Francisco, a split took place, and as a final result most of the delegations went over to him. He retained his influence for the nomination of delegates from San Francisco.[34] The local nominations for the party outside San Francisco, however, were not necessarily controlled by the Kearney element, and it is a mistake to assume that all were ardent followers of his tactics.

Election time drew near. The central Republican club of the state met June 6th and endorsed the non-partisan nominees, and recommended that all electors vote for them. Both radicals and conservatives put on meetings to stir popular enthusiasm. For instance, the *Alta* of June 16th said:

> The mass meeting of the central Republican club, last night, at Platt's Hall, in endorsement of the non-partisan ticket, was fairly, but not largely attended, owing, principally, to the desire of seeing the proces-

sion of the Sand Lot King of San Francisco.

Vigorous editorial proclamations of the dangers of radicalism continued to appear up to and including the day of the election. Said the *Alta*:

> The success of the communists at the polls today will make capital prepare to pack up and leave this state; and it can do it. This contingent danger carries more jeopardy to the laboring masses than all the real or supposed menaces from other directions with which the workingmen imagine they are contending.

The Stockton *Independent* proclaimed that:

> The organic law of the state must not be changed to meet the views of communist reformers, nor be amended to please Kearney and his followers.[35]

These quotations are typical of the earnest exhortations of the conservative press throughout the state. Their tone was probably influenced by two important factors. First, the writers, as well as all but an infinitesimal percentage of the population of the state, believed fervently in the sanctity of the institution of private property. An attack upon this institution was regarded as a menace to the country, quite as much as if it had been directed against the government of the state, or against the fundamentals of religion. Communism was both sacrilege and treason. Believing this, it was not hard for editors to write in a convincing fashion. But apart from their own beliefs in the matter, one of the most effective appeals which they could make to the reading public was the declaration that a fundamental institution was in danger. The abstract idea of communism was bad enough, and, when it was coupled with the possibility of the loss or the diminution of the reader's own personal property, it was more than doubly effective as a stimulus to vote "right" and "safely." The press, by skillful play upon the fears of the readers, did much to advance the cause of the non-partisan movement.

The election took place peaceably enough, in spite of some anticipations of violence. From the early returns it appeared that the workingmen had won a majority. At a jubilee meeting at the sand lots Kearney boasted of what his party would do in the ensuing convention. The capitalists were at their mercy, he said. The workingmen would frame a constitution and "shove it down their throats." But returns from the interior soon began to throw the balance the other way, and Kearney shrieked of fraud. "Every county clerk in the state is a little infamous petty thief, and the returns will in all probability be doctored. The non-partisan blood-suckers will find a willing tool in every county clerk in the state."[36] But accusations of corruption could not turn the tide of the election. The workingmen carried San Francisco, but they failed to carry the state. Said the *Alta*, "San Francisco has been disgraced, but the interior counties have saved the honor of the state." The final count showed that the non-partisans had elected seventy-seven delegates, the workingmen fifty-one, the Republicans eleven, and the Democrats ten, with three independents. The non-partisans had a good majority in the convention.

For our study the membership list of the constitutional convention merits further analysis than a statement of the tickets under which the delegates were elected. An analysis in terms of their occu-

pations offers much that is suggestive. They were as follows:

57 lawyers
39 farmers
8 merchants
5 carpenters
5 physicians
4 miners
3 journalists
2 plumbers
2 clerks
1 district judge
1 justice of the peace
1 deputy sheriff
1 school teacher
1 telegraph operator
1 restaurant keeper
1 bookkeeper
1 cabinet maker
1 printer
1 gardener
1 tinner
1 rigger
1 grocer
1 sign painter
1 furniture dealer
1 boot maker
1 lithographer
1 tailor
1 turner
1 miller
1 cook
1 music teacher
1 cooper
1 lumber dealer
1 painter
1 corporation president
1 unknown

Judging by the number of lawyers, farmers and merchants on the list it would seem that the political order and the established rights of property were safe from violent disturbance at the hands of the convention. Before commenting on the entire membership, however, it is well to take up and analyze some of the groups within that membership. Take the thirty-two delegates that were chosen at large in the state. Classified by occupation there were

22 lawyers
3 farmers
2 merchants
2 journalists
1 corporation president
1 physician
1 clerk

It is, of course, an obvious conclusion that these men would not be ardent exponents of Kearneyism. They would be likely to stand for conservative action in the framing of a constitution, and for ample protection to the business interests of the state. More than two-thirds of the group were lawyers, and would be supposed to know something of the methods and the ends to be achieved in framing a fundamental law of the state. While the entire group of delegates-at-large represented but slightly more than one-fifth of the number elected, they included more than a third of the whole number of lawyer delegates chosen.

The great number of lawyers in the convention is a point to be remembered in all studies of the proceedings. It would take another study, far more extensive than this, to account for what is commonly called the "legal mind." It is indicative of a habit of seeing the phenomena of the social order chiefly as they may be classified in terms of legal categories. These categories have over many centuries been in the process of building. Legal training is begun by the process of learning what things have survived from the past, to be guides of legal action in the future. It is based upon *authority*. If the process of the development of law is creative it is commonly regarded as such only as the slow process of history is creative. The individual lawyer only applies to the phenomena of his day the legal principles which have been established in the past. Hence, he is not commonly a man who, when he sees society in difficulties amid new situations, sets out to discover a new series of orderly arrangements for the improvement of relationships. He is not eager to experiment. He has been trained to look only to the past, to the legal past, for his solution to the problems of the present and the future. So it is that when sweeping reforms are made in the social order the

lawyer is apt to be a dead weight to be dragged along, rather than a leader in the movement. To such a statement as this there are always enough exceptions to provide a basis for forceful argument to the contrary—and there were striking exceptions in the constitutional convention; but the careful observer will find that in general the statement holds, particularly for the period which we are studying, and is to be taken into account in most studies of political phenomena.

Further it may be said concerning lawyers that they are in a sense made aristocrats by their superior training, while they are at the same time dependent for their livelihood upon men who have money, just as are other employees. So valuable have been the services of the most able of them, that their aristocracy has been recognized by their employers, and the two groups have fraternized. They have recognized that their interests are common. Again, lawyers have been organized in a highly group-conscious, self-respecting profession. They have been self-contained and self-satisfied in their attitudes. All this in sharp contrast to the more menial laborers for hire who have been regarded only as tools in the hands of their employers, and who have not even yet achieved all the benefits of a tightly-knit organization. This interpolation will throw further light on the analysis of the membership of the constitutional convention.

The entire non-partisan ticket for delegates-at-large was elected. The workingmen elected all the delegates in the senatorial districts in San Francisco, nearly a fifth of the membership of the convention, yet none of their at-large delegates were chosen. The eight delegates nominated by the non-partisan convention of the first congressional district—which was made up of San Francisco—and elected by a state-wide vote are listed under the following classification:

7 lawyers
1 corporation president

The thirty delegates elected likewise from San Francisco, but on the workingmen ticket, may be classified as follows:

3 lawyers
3 carpenters
2 merchants
1 painter
1 cabinet maker
1 miner
1 gardener
1 gas fitter
1 tinner
1 rigger
1 grocer
1 sign painter
1 furniture dealer
1 telegraph operator
1 boot maker
1 lithographer
1 tailor
1 turner
1 physician
1 printer
1 clerk
1 plumber
1 bookkeeper
1 restaurant keeper
1 cook

The contrast between the two groups is too striking to require further mention. Most of the men elected on this workingmen's ticket were laborers who had little property at stake. They received fixed wages from the capital of other men, not necessarily gaining with the prosperity of their employer, and losing only their jobs with his misfortune. Of the few among them who were small-scale capitalists most were retail merchants of one kind or another, who served the laboring group with which they voted. The three lawyers chosen were men who at an early date had championed the cause of the agitators, and who had been active in the defense of those arrested. It was solidly a group from that discontented class that was out to "cinch" capital.

Obviously, in general ability or in special training for the political arena, the

workingmen delegates were not the equals of the delegates-at-large. They could under most circumstances control a constitutional convention only by having superior weight in numbers, or perhaps occasionally by being the best organized. The non-partisan group contained many of the best lawyers and shrewdest politicians in the state, and had in general a high degree of ability in political engineering. Thus, whatever may have been the motives of the legislators who provided for the addition of thirty-two delegates-at-large to a body already too numerous for efficient action, the result was to secure the choice of a group of men who were, to say the least, not hostile to the contemporary political and economic order.[37] Had they not been chosen the workingmen would still not have had a majority in the convention, but the balance as to numbers would have been much more even. It seems probable that without the presence of the delegates-at-large the convention might have framed a constitution that would have merited all the venomous criticism that was heaped upon the one that was presented for acceptance, but on the other hand it might in that instance have been rejected by the farmers, whose support of the new constitution was essential to its adoption.

Although the workingmen's party was the result of bitter discontent throughout the state, the nature of the discontent varied with the different localities, and with the different interests and occupations of the people. Something of the difference between San Francisco and the rest of the state is indicated by the occupations of the workingmen who were elected outside of San Francisco. They were:

7 farmers
5 lawyers
3 merchants
1 cooper
1 miner
1 school teacher
1 justice of the peace
1 carpenter
1 physician

Here is at once suggested a higher degree of ability and experience in working with people than was to be found in the San Francisco delegation, and a much more definite interest in the preservation of the rights of property. Whatever their grievances, most of these men had a stake in the existing order. They could not afford to threaten existing interests with the same abandon as that of their brethren in San Francisco. They had their farms and their stores to protect. They had no use for communism, but they could join with their city brethren in hostility to the hoarders of great wealth, particularly to those whom they conceived to be robbing the country by means of monopoly in transportation. In Los Angeles county the interests of the workingmen and of the farmers were so nearly identical that two delegates were elected on a joint farmer-workingman ticket.

But if the type of workingmen delegates varied with the locality from which they were chosen, so also did that of the non-partisan delegates vary. Here the dividing line was between the delegates chosen at large, and those nominated and elected in the smaller districts. The former group has already been presented. The latter stood as follows:

20 farmers
17 lawyers
2 miners
1 journalist
1 district judge
1 carpenter
1 lumber dealer
1 merchant
1 physician

Here is not the predominance of lawyers that appeared among the delegates-

at-large. However, they closely rival the most numerous group, and that group is one of farmers, property holders. Being farmers meant also for most men being debtors, holding mortgaged property. Such a group will obviously not align itself in all matters with the creditor class, or with the representatives of great corporate interests. Here, indeed, the non-partisans would seem to have much more in common with the rural workingmen than with the other wing of their party. The recognition of a common cause was to appear in the convention, as alignments took place for and against certain measures.

Though for the most part unsuccessful in the election of delegates, the two old parties did succeed in winning a few seats in the convention. For the most part they were scattered throughout the state. No non-partisans were elected in the senatorial districts south of Santa Barbara county, and no workingmen south of Ventura county, except that two delegates were chosen on a joint farmer-workingmen ticket in Los Angeles county. However, most of the population of the state was north of these points at that time. The occupations of these delegates seem to indicate little that is significant. They were:

Republicans	*Democrats*
6 lawyers	5 farmers
3 farmers	3 lawyers
1 miller	1 physician
1 music teacher	1 deputy sheriff

(Independent)
1 lawyer
1 farmer
1 unknown[38]

Of course, in studying the constitutional convention it must be remembered that the delegates were not just lawyers, or farmers, or merchants, or laborers, but that they were individual men, with all the diversities of traits and characteristics that are commonly found in such a group. It may lend vividness to the picture to take a few of the delegates, chosen almost at random, and introduce them briefly in their capacity as individuals. Hence the following paragraphs.

J. P. Hoge of San Francisco was a delegate-at-large from the first congressional district. He was an able lawyer and a smooth politician, and had been chairman of the Democratic state committee since 1868. Walter Van Dyke, lawyer, was chosen on the same ticket. He had been on the Republican state central committee since 1869, and had been chairman since 1871. M. M. Estee was another lawyer from the same district. He had been a member of the executive committee of the independent party in 1873, a party which drew its support from groups which were hostile to the growing power of the transportation and other great corporations. He had been considered as the party's candidate for governor in 1875, but had declined to run, possibly realizing that the Democratic strength was great enough that his defeat would be practically assured. In 1874 he had represented San Francisco in the legislature, and had been chosen speaker of the assembly. While standing firmly on a platform of law and order, he made a strong appeal for the support of the workingmen, and secured a heavy vote from them.[39] He claimed that Kearney did not represent the workingmen of the state, and furthermore that the workingmen of the interior represented a more stable and industrious element of the people than did those of San Francisco.[40]

Another San Francisco lawyer from the first congressional district was W. H.

L. Barnes. He was a Civil War veteran, a man who bore himself with an air of pompous superiority, and who was not popular with the masses, if the newspapers are to be believed. The Sacramento *Bee* said of him in one instance that while Barnes was riding in his carriage one day a policeman forced his coachman to stop so that some pedestrian ladies might pass. The coachman tried to whip up his horses and crowd by, but the officer prevented him from doing so. Barnes was very angry, and forced the police commissioners to make an investigation. The decision was against him.[41]

David S. Terry was a man of vivid history. He had been chosen a member of the supreme court of the state in 1855, had later become chief justice, and was known as an able judge. He was a southerner by birth, and brought to California some of the traits of violent action that were characteristic of pioneer southerners. In 1856 he had engaged in a controversy with a member of the San Francisco vigilance committee, had stabbed a member with a knife, and had been imprisoned by the committee until the man recovered. In 1859 he resigned his position on the bench to fight a duel which grew out of the struggle between the northern and southern factions in the state, and Senator Broderick fell mortally wounded. He fought in the Civil War on the side of the Confederacy. After the war he was for some years on a ranch in Mexico, but had trouble with the Mexican government, and returned to his former home at Stockton.[42] Although the constitution of the state denied the right to hold office to any man who had fought a duel he rose in power in the Democratic party, and became a member of the Democratic state committee in 1875.[43] He was elected to the constitutional convention on the non-partisan ticket.[44]

James McMillan Shafter, delegate-at-large from the third congressional district, had had wide experience as a lawyer, judge, member of the legislature, and congressman.[45] He had secured a large tract of land in return for legal services, and had developed it into a fine dairy estate. H. C. Wilson had come to California in the early mining period, had been a miner, then a dealer in mining supplies, and had finally turned to stock raising and general farming.[46] He was said to own a tract of 23,000 acres of land.[47] It may be remarked in advance that he was opposed to the taxing of indebtedness,[48] and to any proposed scheme for breaking up large land holdings.[49]

H. C. Rolfe was a lawyer and district judge from San Bernardino, a man of meticulous legal training, who in the convention was to give of his time to pointing out the legal defects of many of the measures proposed. He was elected as a Republican. Byron Waters, also from San Bernardino, was a non-partisan delegate-at-large from the fourth congressional district. He was a lawyer, twenty-nine years of age, was popular with his constituents, and was elected by a large majority. Eli T. Blackmer, from San Diego, gave music teaching as his occupation. He had been superintendent of schools, however, and it was probably by virtue of this experience that he was chosen delegate to the convention. J. J. Ayers, of Los Angeles, was also a delegate-at-large from the fourth congressional district. He had had wide experience as a printer and publisher. In 1873 he became managing editor of the Los Angeles *Express*. He was a participant in the struggle which the Los Angeles farmers

and business men were having with the transportation companies.

J. W. Winans came to California as a lawyer, and achieved great popularity. He was a member of the board of trustees of the state bar association, and also of that of the state library. He was one of the founders of the state university, and was a member of the board of regents. He was one of the organizers of the Pacific Bank.[50]

Charles J. Beerstecher was one of the three lawyers among the thirty workingmen delegates elected in San Francisco. He was only twenty-seven years of age. His father had been implicated in revolutionary activities in Germany in 1848, and had fled to the United States, where the son was born in 1851. He was educated for the legal profession at the University of Michigan, practiced law in that state, and went to California for his health in 1877. He seemed to possess his father's aptitude for leadership in revolutionary movements, and at once became interested in labor struggles in San Francisco. He was nominated to the convention by the German-speaking branch of the workingmen's party. He was described as being of a highly nervous temperament, and very fiery of speech.[51]

Clitus Barbour, another of the three workingmen lawyers from San Francisco, was of Irish, German and Welsh descent. He had been one of the defenders of the leaders of the workingmen's party in the arrests that were made. He was forceful, eloquent and pugnacious, without the type of self-restraint that is indicative of power in reserve.[52] He had not been able to establish himself with his profession, and to make a success at the bar,[53] and, possibly because of this fact, he had joined with the radical movement and had become a leader of men who were inferior to him in intellect and in training. His associate in the defense in the riot prosecutions was J. S. Reynolds, a lawyer and newspaper man. He had been a reporter on the Portland *Oregonian,* and had later purchased the Idaho *Statesman,* with which he became a crusader against bad politics in the state. He moved to San Francisco for his health, practiced law there, and championed the cause of the workingmen.[54]

Patrick Dowling, a workingman from San Francisco, was a miner and property owner. He proclaimed earnestly that the men in his party were not demagogues, but that they were self-respecting workers who were fighting to destroy great abuses. They were loyal to the government. They had included in the platform of their party the resolution that the constitution of the United States is "the charter of our liberties." Dowling said of this act:

> I happened to be secretary of the state convention of the workingmen's party when this plank, or resolution as it was then, was adopted. It was simply put in there, or adopted, because there was not a paper in the country scarcely, but called us communists and thieves, cut-throats and houseless and homeless vagabonds, and in order to persuade the people that we were nothing of the kind we put this in.[55]

Dowling was to be one of the sane leaders among the workingmen in the constitutional convention, though he was not well trained for work in that field.

Henry Larkin was a farmer, who was elected as a workingmen's delegate. He was from a farming community which owed heavily on its property, and which had incurred serious losses through debts incurred in giving aid to railroad schemes

which never materialized. He had been a deputy sheriff, and had served one term in the state senate.[56]

These sample biographies of a few delegates indicate something of the degree of heterogeneity in the personnel of the convention. An interesting factor which received much attention at the time was the nativity of the delegates. Twenty of the one hundred fifty-two were foreign born, of whom thirteen were in the workingmen's group from San Francisco. Of the twenty, eight were from Ireland, three from Germany, two from Scotland, and one each from France, Jamaica, Australia, England, Denmark, and Nova Scotia. The number of Irish is indicative of the Irish population in the state at the time, especially in San Francisco, and of the prominent place which they took in politics. Kearney himself, with the other major leaders, was not among the delegates chosen, due probably to the division in the party at the time, and possibly also to a shrewd realization of the fact that he was not equipped for successful participation in a convention of this kind. Nevertheless, he and most of the Irishmen of the state were for the most part back of the delegates whom they had elected. The Spanish, the Mexicans, and the Indians were not represented. That California was still a pioneer state is indicated by the fact that only two of the one hundred fifty-two delegates had been born in the state. These two were workingmen from San Francisco. The others who were not foreign born were from all parts of the United States, though predominantly from the north.

This, then, is the human material, with its diversity of kind and preparation, that went into the constitutional convention. The tickets on which the delegates were chosen indicate rather vaguely something of the alignments along which they might be grouped, the non-partisans seeming generally to be hedged with conservative interests, and the workingmen to insist upon change, regardless of its cost to the existing order. Classification strictly along lines of occupation reveals more, tending to fall into three groups. There were in the first, large capitalists, their representatives at law, and a few great land holders. In the second were the small farmers, usually with heavily mortgaged property, with grievances against land and water monopolists and great corporations, and, as will be seen later, against the prevailing mode of taxation. In the third group were the city laborers who differed from the farmers chiefly in owning little or no property, and for this reason in having less of a stake in the existing order. The observance of the alignments and antagonisms within and among these groups will be a dramatic and revealing part of our study of the political process.

CHAPTER III

ORGANIZING THE CONVENTION

IT seems probable that more delegates would have been elected on the workingmen's ticket had the candidates not been picked generally from the rougher elements of the party. Advocates of reform such as James McClatchy, editor of the Sacramento *Bee,* and Henry George, advocate of the single tax, found themselves left in the ranks rather than called to leadership. McClatchy had tried to get a nomination as a candidate, and Henry George had been defeated as a Democratic candidate from San Francisco. He had entered as a workingmen's candidate, but had been rejected because he refused to take a pledge of obedience to the party. So it was that the workingmen elected only one-third of the membership of the convention, and had no members of great political or intellectual ability. Nevertheless, they were not downhearted. Throughout the summer the delegation met each week to discuss amendments to the constitution and to make plans for the organization of the convention.[1] On the evening of September 27th, the day before the meeting of the convention, the entire group of workingmen's delegates met in the senate chamber, behind closed doors. There they organized a constitutional convention reform club, which was to meet as often as its officers or members chose to call it together.[2] This was in continuation of the ward club type of organization which the party had made effective in San Francisco and elsewhere. Individuals were to yield their views to those sponsored by the group, and all were to act as a unit. Although they had not a majority of the membership of the convention they believed that they might take advantage of the lack of organization and unanimity of purpose on the part of the other two-thirds, and so control the action of the convention. Some of the non-partisans were wise enough to see the possibility, too, however, and to prepare for it.

The convention met Saturday morning, September 29th, with Governor Irwin in the chair. For various reasons a few of the delegates elected were not present. Those on hand took seats that had been assigned to them by the secretary of state, who was the temporary secretary of the convention, and were sworn in by the governor in groups of four.[3] After this proceeding W. L. Dudley, of San Joaquin county, a non-partisan delegate, moved adjournment until Monday morning, in order that the members might have opportunity of conferring with each other in regard to the matter of organization. C. J. Beerstecher, workingman lawyer from San Francisco, immediately moved that the adjournment be until three o'clock in the afternoon only. The roll was called on the latter motion, and it was voted down fifty-seven to eighty-nine. All the workingmen except one voted for the motion, and he voted against it because he asserted that the governor had no right to adjourn the convention at all. While the vote was not altogether on party lines it showed that the workingmen were eager to proceed with the

election of officers as quickly as possible, having already laid their plans, while the other groups present wanted the opportunity of holding conferences before casting their votes. The motion to adjourn until Monday was carried.

Saturday evening the non-partisans, democrats, and republicans met in caucus to plan the organization of the convention.[4] Eighty-three delegates responded to the roll call. M. M. Estee said that these groups had been called together because "another portion of the convention have for days been caucusing in another portion of the building. It became necessary, or it would seem to be necessary, for us to meet in consultation, if we expect, as representatives of the people of this state, to control the organization of this body, to meet and consult as to who are the fittest gentlemen for the various positions within the gift of the convention."[5]

Thus it was frankly assumed that this group, and not the workingmen, or the Kearneyites as they were now being called, were the representatives of "the people of this state." All summer long the *Record-Union* and other papers had urged the non-partisan delegates to effect an organization through caucus to ensure control of the constitutional convention—to protect the rights of "the people." The Sacramento *Bee,* the San Francisco *Examiner,* and other papers not in sympathy with the conservatism represented by many of the non-partisan leaders demanded to know why control by the non-partisans was necessary to the protection of the state. The workingmen were just as much representatives of the people as were any of the non-partisans. But to each group "the people" were for the most part coincident with its constituency, and it was not to be expected that agreement would be reached.

It was with great reluctance that the rural delegates who were not workingmen took part in a caucus organization. They were suspicious of the city delegates, and of the corporate interests which were represented by prominent lawyers in the convention. It was known that these lawyers were supporting Joseph P. Hoge for president of the convention, and M. D. Boruck for secretary. Hoge was a corporation lawyer, who was noted for his legal ability, his vigor, and his profanity.[6] It was not in his favor with the rural delegates that he was being vigorously supported by S. M. Wilson, Central Pacific lawyer, who by his advice as to how to arrange the democratic state ticket had brought about the defeat of a movement for a constitutional convention two years earlier.[7] M. D. Boruck was not a member of the convention. He was a republican, the proprietor of the *California Spirit of the Times,* and an avowed friend of the Central Pacific railroad.[8] With these men slated for leadership it is not surprising that the anti-corporation delegates came to the meeting reluctantly, and only upon the understanding that any action taken there was not to be binding upon votes to be cast in the convention. There was also some fear that the close organization of such a group might impair the future of the old parties.[9] To the entrenched leaders of the old parties such a possibility was not pleasant to contemplate. This phase of the situation will provide food for thought for those people who believe that the life of political parties is dependent upon the political principles which they espouse.

Without nominations a vote was taken

in the caucus for candidates for the presidency. The result was

J. P. Hoge.....49
Volney Howard..... 8
J. V. Webster..... 4
J. J. Ayers..... 3

There were enough additional scattered votes to make a total of eighty-three. Ayers moved that the candidates should express their views on the major problems before the convention, so that delegates might know just where they stood. The friends of Hoge protested strongly, among them being S. M. Wilson, Edgerton, Winans, McFarland, Shafter, and Barnes. But Hoge arose and stated that he had no objection to stating his views, and swore that he blushed at the thought of being owned by anybody. He stood firmly on the platform upon which the non-partisan candidates from his district had been elected. Though that platform had not been unnecessarily concrete the statement made a good impression for Hoge, and on the second ballot many of the scattered votes were cast for him. M. D. Boruck received more votes for secretary than did any other, but his popularity did not equal that of Hoge.[10]

After seeing the convention in action this first day the *Record-Union* sized it up by saying:

> The conservative wing is strong in its personnel. It comprises more ripe maturity of judgment, scholarly attainment and special knowledge in social and governmental science than any legislative body ever before assembled in this state. In intellectual force, oratorical ability, and broad comprehension of the practical possibilities of government, it is an assemblage of the highest order, fully representative of the best talent and culture of the state. Within its lines are subdivisions of classes; but unlike the former case, these subdivisions are due to sharply defined differences of opinion. These differences have found opportunity but for partial and imperfect development, but the outlines of two or more wings are already discernible. There is the class who hold to the American idea, that the attainment of justice is the foundation of government; that the great problem of human government is how to combine the greatest good of the whole with the least practicable restraint upon individual liberty; that the end of government is to protect men in their natural rights, without restraint upon natural capacities. Opposed to this is already seen a class favoring parental government, under which the confiscation of regulation shall be mandatory and constantly operative. There is also something of the almost obsolete division of state rights against federal centralization; of universal against restrictive suffragists. But the prevailing tendencies of thought place the contest between socialism and legitimate government in the foreground, and will necessarily subordinate all other contests; already the party distinctions of Republicans and Democrats are losing outlines, and except where state right doctrines intervene, will be lost sight of when the real business of the convention begins. The preliminary struggle for the organization of the body was formerly inaugurated by the open conference Saturday evening.[11]

The convention reassembled Monday morning, to proceed with the election of officers. There was much haranguing as to whether candidates should be nomi-

nated from the floor before a vote was taken, and Dr. C. C. O'Donnell, a workingman from San Francisco who was unpopular even with his own group, and who was notably lacking in judgment in matters of diplomacy, made use of the occasion to tell the convention by means of a written speech that the workingmen's party was the real representative of popular sentiment. He went on to make an appeal that the workingmen, though nominally in the minority on the floor, be allowed to divide with the majority the honors in organizing the convention. In the midst of the speech one of his colleagues moved that further reading be dispensed with, and that fifty copies be printed. Dr. O'Donnell was allowed to proceed,[12] however, the apparent result of his efforts being to add further to the disapproval in which his party was held, and to make it the laughing stock of the convention.

The first nomination for president was that of W. J. Tinnin, of Trinity county, a Democrat who was elected to the convention on the non-partisan ticket of the third congressional district. He was a merchant, and was also engaged in banking. He had served two years in the assembly, and had filled a part of a term in the senate by appointment.[13] Volney E. Howard of Los Angeles was nominated. Then Clitus Barbour presented the name of the workingman candidate. He was Henry Larkin, of El Dorado county. Larkin was a former Democrat. He had served one term in the state senate, and had been an unsuccessful candidate for Congress.[14] He was from a rural district, and he was widely known, and so was regarded by the workingmen as an excellent candidate to draw from the farmer delegates elected on other tickets the necessary votes for election to the position of leadership. Barbour, in making the nomination, stressed vigorously and violently the point that there was no issue between the parties by which candidates were elected to the convention, but that the issue was drawn between monopoly on the one hand, and anti-monopoly on the other. The rights of all must be respected. He demanded that the convention be organized according to the wishes of the majority of the people, which were that monopolies should be broken up. He presented a candidate who concurred in these views, and who, like Caesar's wife, was above suspicion.[15]

C. J. Beerstecher arose to second the nomination, and to speak in behalf of his party. "We have been basely and grossly misrepresented," he said. "We are not agrarians, and we are not barnburners, and we are not disorganizers, and we are not levelers, but we came here for the single and solitary purpose of reconstructing the laws of this state, and to give the people of this state a better organic law than they possess today." "We can see that the corporations have rights, and we are willing to give them rights, but we also desire to have the rights of the people recognized. We came here for the purpose of joining with members from all portions of the country, from all parts of the state of California, for the purpose of making a crusade against the aspirations of railroad companies and land monopolies, gas and water monopolies, and the lottery called stock gambling. We came here for the purpose of making a crusade against the Chinese, and for the purpose of reforming the taxation system, and the interest system, but we do not come here for the purpose of taking away any property that any man has honestly acquired. We do not come here for the purpose of confis-

cating the property of any man, but we come here for the purpose of stopping the legalized system of confiscation, namely: by exorbitant rates of interest, by which men's property is being confiscated every day. We come here for the purpose of organizing a right system of taxation; we come here offering to the country members to join them in their fight against their oppressors." Here he had intimated the real motivation that lay back of his speech, the desire to bring about the cooperation of the farmers and the workingmen against a common enemy. He continued, "We recognize that the Granger element in this state has exactly the same fight to make that the honest artisan and mechanic in the City of San Francisco is making." He emphasized the need of unity in a common cause, and reiterated his assertions that the workingmen were not communists and disorganizers, but that their desires and interests lay along with those of the farmers. This speech was the supreme effort on the floor of the convention to secure the unity of the two elements in the selection of a president.[16]

Colonel Hoge was nominated by T. H. Laine, a non-partisan lawyer from Santa Clara county. He began his speech smoothly by accepting the assumption that all delegates were representatives of the state of California, and not of any ism, party, or creed. While respecting the vigor of young men, he had been taught to reverence the wisdom that comes with age. It had been said in olden times, "Young men for war, old men for counsel." A president was needed for the convention whose age and experience all should reverence, and whose learning and ability should challenge admiration. From signs already in evidence there were sure to be storms and whirlwinds in the convention. With a great deal of eloquence he proceeded to declare that Colonel Hoge was the man with the proper qualifications.[17] Of course, many members of the convention were convinced that Hoge and other men of his age and profession were responsible to some degree for the ills which needed reforming, and that the task was for young men of a different type, rather than for old.

There being no further nominations, Clitus Barbour called up a set of resolutions which he had earlier sought vainly to have presented. They required that all persons proposed as candidates for president of the convention should come forward and define their position on six propositions: the control of corporations; land monopoly; water and gas rates; stock speculation; the Chinese; the taxing of mortgages, and the reducing of the interest rate.[18] Such a requirement would have been embarrassing to candidates who sought to draw votes from both the corporation interests and the farmers, and Barbour was evidently attempting to embarrass them and to draw the farmer vote to the workingmen's candidate. Governor Irwin, who was temporary chairman, ruled that the resolutions were out of order, but that any gentleman could express his views if he desired.

One hundred forty-seven delegates cast ballots in the election, and seventy-four votes were necessary to a choice. The results of the first ballot were:

Hoge	67
Larkin	49
Howard	11
Tinnin	17
Reed	3

Second ballot:

Hoge	70
Larkin	49
Howard	9
Tinnin	17
Reed	2

Third ballot:

Hoge	71
Larkin	49
Tinnin	16
Howard	9
Reed	2

Still there was no election. There were fifty workingmen delegates in the convention, including the two farmer-workingmen delegates from Los Angeles county, and forty-nine of them voted consistently for Larkin. Larkin himself voted for Tinnin, Tinnin for Howard, Howard failed to vote on these ballots, Reed voted for Hoge, and Hoge did not vote at all. No votes other than those of the workingmen were cast for Larkin. The delegates supporting Howard and Tinnin were the nucleus of the poorly organized group which feared the control of the convention by corporation lawyers from San Francisco, and who sponsored the interests of farming and mining districts, and of localities at considerable distances from San Francisco. At the end of the third ballot it was seen that without the combination of minority groups no one of the minority candidates had any chance of election. J. J. Ayers, of Los Angeles, who had voted consistently for Howard, moved to take a recess until four o'clock P. M. The motion was lost and the fourth ballot was taken resulting as follows:

Hoge	72
Larkin	49
Tinnin	17
Howard	8
Reed	2

Howard voted this time, adding one to the total for Hoge. Byron Waters, who had voted consistently for Howard, moved that a recess be taken until four P. M., and the ayes and noes were called for by Barbour, Waters, and Larkin. The roll was called, and the motion lost, 69 to 80. J. P. Hoge voted in the negative on the motion. Forty-seven workingmen voted for the motion, as did many of the delegates supporting other minority candidates. The followers of Hoge for the most part voted against it.

When the loss of the motion was announced, Clitus Barbour arose and said, "I withdraw, by request, the name of Henry Larkin, and vote for W. J. Tinnin."[19] The workingmen, unable to elect their own candidate, had agreed to go over to Tinnin, in an effort to defeat the corporation candidate. A fifth ballot was taken, Tinnin and Hoge not voting, with the following result:

Hoge	74
Tinnin	73

The margin of winning and losing was exceedingly thin. Two men who voted for Hoge had doubtful rights as members of the convention. Eugene Fawcett was a district judge from Santa Barbara county. The constitution of the state, as amended in 1862, provided that judges should not be eligible for any office other than a judicial office during the term for which they had been elected.[20] If the position of delegate to the convention was an office, then Judge Fawcett was ineligible. Another provision of the constitution was to the effect that no man who had fought a duel could hold office.[21] David S. Terry had killed Senator Broderick in a duel in 1859. He, too, was ineligible if the position of delegate was an office. Workingmen protests were without avail, however, the votes of the

two men were counted, and Colonel Hoge was escorted to the presidential chair between two of the defeated candidates, Tinnin and Larkin. He made a brief speech in which he promised justice to all and favors to none, and the convention adjourned until the following day.

M. D. Boruck, the choice of the caucus which had met on the evening of the first day of the convention, and confessed friend of the railroads, was the first man nominated for secretary of the convention. The nominations of five other men followed, the workingmen giving their support to F. J. Clark. On the first ballot Boruck received sixty-nine votes, while seventy-five were necessary for a choice. The fifty workingmen all voted for Clark. Boruck's support came largely from the same group that had been back of Hoge for president. On the second, third, and fourth ballots Boruck's vote remained much the same, that of Clark was unchanged, while J. A. Johnson, who in the beginning had received eleven votes, climbed up to twenty-two. During the counting of the fifth ballot an agreement was reached by the minority groups, and before the results were announced the workingmen started changing their votes from Clark to Johnson. After much confusion a new roll call was ordered, and the final vote stood

Boruck	71
Johnson	77

Johnson was elected, by a coalition of the opponents of corporation interests. The office may not have been of the highest importance, but the alignment of votes was indicative of what might and did take place when important constitutional measures were before the convention.

Before the other officers were elected acrimonious debates took place over the filling of vacancies and the eligibility of certain members. J. S. Reynolds, workingman, proposed a committee to investigate and report on the matter at an early date. Conservative members vigorously attacked the resolution, which would have brought into question the status of two men who were voting with them. It was voted down. Then W. H. L. Barnes, a corporation lawyer, presented a resolution providing for the immediate filling of the three vacancies that existed. The resolution was lost by a narrow margin, some delegates insisting that the other officers should be elected immediately. The workingmen voted almost solidly against the resolution, and were aided, in the main, by the rural and anti-corporation delegates who had opposed the election of Colonel Hoge. The conservatives were unwilling to discuss doubtful credentials of their members, but they were ready enough to fill vacancies, for they were fairly sure that they could do so with men of their own choosing.

On the following day Clitus Barbour moved that the delegates-at-large from the second congressional district be empowered to appoint a person to fill the vacancy made in their group by the death of H. H. Haight, that the delegates from the City and County of San Francisco appoint one to take the place of their colleague, Thomas Morris, who had resigned (he had resigned in order to avoid prosecution for exercising the privileges of citizenship on forged papers),[22] and that the vacancy caused by the death of G. M. Hardwick, from Mariposa and Merced counties, from which counties there was no other representation, be filled by the convention. In all cases the convention was to reserve the right to reject any who might be found ineligible

or unworthy of the office. Barbour's purpose, as the delegates very clearly saw, was to secure the election of a workingman delegate in the place of the one whom they had lost. Without some such provision as this it looked very certain that fifty workingman delegates would not be able to secure the choice of another of their stamp in a body where they numbered only a third, and stood in antagonism to the larger part of the other two-thirds. President Hoge ruled the resolution out of order, on the ground that the law provided that all vacancies should be filled by the convention.

After much futile debate over the matter of reporting in the convention the election of the other officers was returned to, on Wednesday, October 2nd.[23] Ten candidates were nominated for sergeant-at-arms. On the first ballot there were fifty votes for the workingmen's candidate, and the highest vote for any other candidate was eighteen. Two more ballots were taken, with little change, and the convention adjourned. That evening the non-partisans held a conference—they would not call it a caucus because some of the delegates objected to holding a caucus—and agreed on the candidates whom they would support for the minor offices.[24] On the following day the matter of electing two assistant secretaries was brought up.[25] It was moved that they be elected on the same ballot. Henry Larkin, workingman, said that unless there had been a caucus and the matter cut and dried by the parties of the other side he hoped the secretaries would be elected one at a time. Henry Edgerton, non-partisan from Sacramento, remarked that it was refreshing to hear the gentleman talk about caucuses, but that there had been too much delay already. It was decided to vote for the two candidates at once. The result showed eighty votes for the non-partisan candidates, forty-eight for those of the workingmen, and a few scattered, chiefly from men who were strongly anti-corporation. The non-partisans elected their candidate for sergeant-at-arms by a similar vote. They also elected I. S. Belcher, Marysville lawyer, as president pro tem, and such other officers as were needed by the convention. No workingmen were chosen.

The bickering between the workingmen and the other groups in the convention went on, over all sorts of matters, important and unimportant. The next sharp issue to be settled was the filling of vacancies.[26] To fill the vacancy left by Thomas Morris, Clitus Barbour nominated Judge J. R. Sharpstein, who he said was the unanimous choice of the delegates from the City and County of San Francisco. Judge Sharpstein had been a workingman candidate for delegate-at-large from the first congressional district, and had led his ticket in the number of votes received. Morris had been elected on the local ticket, but Sharpstein had subscribed to the same platform, and had been voted for by the same people. Barbour appealed to the fairness of the convention on the grounds that the workingmen had shown the same spirit. They had secured the resignation of Morris as soon as his ineligibility was evident. They might have brought him to the convention and voted him upon all the propositions of organization, and might possibly have changed the results. C. W. Cross, workingman from Nevada county, seconded the nomination. He held that it was only fair that vacancies should be filled by men who expressed the sentiments of the local electors. The workingmen were willing to concede the same right to the non-partisans, and to vote for their candidate on

the same principle, in filling the vacancy left by Mr. Haight. For the San Francisco vacancy Judge Sharpstein would be the people's choice.

W. H. L. Barnes proclaimed that vacancies were to filled by the convention, and not by localities. He nominated R. H. Lloyd, of San Francisco, a non-partisan who had received the next highest vote after Morris on the local ticket. With a fiery oration he attacked the political reputation of Judge Sharpstein, showing him to be a political opportunist who went with the group that offered him power. Furthermore, the Judge had at one time been on the side of the hated corporations. He had sponsored the cause of the Spring Valley Water Company, and had lost a decision before the supreme court. Having tied up the workingmen's candidate with the corporations, the chronic object of workingmen anathema, he proceeded: "When we shall have finished the work of this convention I think it will be apparent who are the men about whose necks the corporation collar stands. It is not upon mine, and I hope the gentleman will not repeat what he said this morning. I believe in the right of the state to control every corporation in it. It has the right and should have the power, and such a provision should be put in this constitution as shall hold them with a grasp of iron, so that never again in this state shall there be any unjust discriminations, any outrage or wrong inflicted upon persons or communities from the day this constitution takes its place as the organic law of the state, until time shall be no more." (Applause.) He then went on to praise his own candidate. He had "the support of all classes of men, German, French, and Americans—thank God there are a few left." (Applause.) It was said of Barnes that he was more eloquent than profound.[27] Judging by his position with regard to certain provisions in the new constitution it seems that it must have been the temptation to pleasing eloquence that motivated him here.

Jose R. Pico, a son of a member of the first constitutional convention in the state, was then nominated. He would be a representative of the native Californians. Clitus Barbour, enraged at the attacks which Barnes had made upon his candidate, arose to answer him. He had no doubt that "the gentleman's own candidate . . . is an attorney for the Spring Valley Water Company today. He is a partner and relation—a son-in-law—of Senator Sharon, and they have all that business, and know all about the monopolies of the deepest and blackest dye." C. J. Beerstecher tried to smooth out the situation by saying that the workingmen were not trying to force Judge Sharpstein on the convention. They were only presenting him as the people's choice, as demonstrated at the election. He had nothing to say against "the character of Mr. Lloyd. Nothing at all. Absolutely nothing." That was a matter for the convention to consider and inquire into. On the basis of the election returns he asked that the office be given to Sharpstein. To show their sincere desire that the will of the people be expressed the workingmen were willing to vote for the non-partisan candidates for the other two vacancies.

J. W. Winans, of San Francisco, non-partisan delegate-at-large from the first congressional district, arose to say that the people of San Francisco were not represented in the convention at all. The old political parties had split among themselves. "The present local delegation does not represent a majority of the

voters of San Francisco. We divided among ourselves and fell a victim to our own dissentions. Had it not been so this local delegation would never have been here."

J. S. Hager, said by Ayers, of the Los Angeles *Express,* to be the only non-partisan delegate from the first congressional district who was anti-corporation,[28] said that he had known Mr. Lloyd for twenty-five years. After the eulogy pronounced on him by Colonel Barnes it would be unbecoming to say one word against him; on the contrary, he felt rather proud of him. At the same time, he wished, however, to present the name of Judge J. C. Burch, of San Francisco. The name of S. B. Thompson, a carpenter, was presented, it being remarked that the legal profession was already well enough represented in the convention, without the selection of another of their group. The first ballot showed the following results:

Sharpstein	56
Lloyd	44
Thompson	20
Burch	15
Pico	1

For the first time the workingmen were receiving some aid from other delegates. Five more ballots were taken, without substantial change. The convention adjourned, an agreement was arrived at, and at the next meeting the names of Burch and Lloyd were withdrawn. Another ballot was taken, and Thompson won over Sharpstein, sixty-nine to sixty-one. The coalition had defeated the aspirations of the workingmen.

For the vacancy made by the death of H. H. Haight the workingmen nominated a candidate, but did not attempt to secure his election. J. S. Reynolds arose and said: "I beg leave to place in nomination the name of that inveterate foe to the corporations, that life-long friend of the people, the name of that great and good man, Leland Stanford. I do this, Mr. Chairman, on the ground that I prefer to deal with principals rather than agents."[29] Reynolds and Dowling voted for Stanford. To fill the third vacancy only three of the workingmen voted for the party candidate. Others, yielding to levity, voted for Leland Stanford, M. D. Boruck (who in the race for the position of secretary had declared that he wanted no votes from the followers of Kearney), Peter Donahue (railroad owner), Theodore Tilton, Dr. Mary Walker, and Henry Ward Beecher. The vacancies were all filled by non-partisans. The workingmen had failed to control the organization of the convention, except as they had, by joining with rural and anti-corporation delegates, prevented the election of the secretary desired by the more conservative group.

President Hoge, on October 2nd, appointed a committee of fifteen on rules and order of business.[30] Twelve members were non-partisans, one was a workingman, one a Democrat, and one a farmer-workingman. M. M. Estee was chairman. The control of this committee was therefore without doubt in the hands of the group which organized the convention. This committee made recommendations as to what other committees should be formed to do the special work of the convention. A total number of thirty-one was provided for. The chairmen of the important committees were chosen from among non-partisans who were loyal to the organization, and memberships were so arranged that there was no danger of extreme insurgent control. A subcommittee of five members prepared a set of rules for the convention, with "Cushing's Law and Practice of Legisla-

tive Assemblies" as the basis. After some debate the rules were adopted, and the convention was ready for the introduction of propositions dealing with the content of the new constitution. Following the order of the names of members on the roll, each in turn was allowed to introduce two bills, which were referred to the president to the various committees. The organization was complete and functioning.

Although nominally in this chapter we have been dealing with matters that preceded work on the new constitution, the processes which we have been studying have in fact been an integral part of the larger process in which the constitution was formulated. With this fact in mind it may be well to summarize the story of the organization, and at the same time to suggest such interpretation as we can bring to bear, and as may throw light on similar political processes under similar circumstances. The non-partisans, the group having the most votes and the most men who were accustomed to playing the game of politics, organized the convention. Their power was effectively challenged only when the rural and anti-corporation delegates combined with the workingmen to defeat them, in the choice of a secretary. By the time the organization was completed it must have been apparent to all concerned that it was only by such a combination of delegates of diverse traits, capacities, and interests, that the conservative group could be placed in a minority, and liberal provisions be written into the new constitution.

At the same time it was apparent that the workingmen were closely organized among themselves and prepared to act as a unit in the achievement of the ends which they coveted, and that they were not much concerned with the interests of others save as they coincided with their own. The farmers and other anti-corporation delegates, on the other hand, were hardly organized at all, and the farmers were typical of men of their employment in their distrust of any organization that would limit their personal liberty of choice and action. They had had some training in working with others through the grange, the farmers' clubs, and the independent party of 1873, but fundamentally the farmer of the period was a man of independent action who depended for the preservation of his own interests rather exclusively upon himself. The farmer delegates distrusted the clannish Kearneyite agitators, much too thoroughly to unite with them in any case where the effect of doing so was not perfectly clear. They did not vote for the workingmen's candidate for president. It was the workingmen who finally shifted their votes, and by doing so came near to defeating the conservative candidate. Such a combination revealed possibilities for the future, but there seemed small chance for the framing of a workingmen's constitution. It is to be noted that each group looked upon itself as the true representative of the people, and sought, apparently without self-questioning, to make use of any effective means for extending its influence over the entire convention and over the content of the constitution which was to be framed.

The process of organizing the convention led to the combination of individuals and small groups with diverse interests into a few larger groups, each of which had some chance of winning the contest. The victory was won by the party that was able to secure the temporary allegiance of the largest number of delegates. The period of the election was one of

constant struggle on the part of the leaders to draw to the support of their candidates the largest number of delegates. When defeat was inevitable the next strategic move was to swing the following to the least objectionable candidate who remained. Individual leaders stood out in the conflict, but, although much time was given to oratory, some well done and some not, their real methods of fighting were by organizing and maintaining effective group action. They, of course, took advantage of the normal divisions that were based on outstanding interests and traits among the delegates, and sought to make differences seem more apparent, or to efface them, according to the probable effect of such strategy upon the size of their own following.

The conservative group, as might be expected from its composition, was the most skillful and effective in manipulating individuals and groups. It contained the most men of outstanding ability, and it had a large number of lawyers and politicians whose vocations depended on their capacity for exercising political control. The workingmen, conscious of their lack of training in political maneuvering, created a close organization of their own group, but they accentuated their party lines to the point of antagonizing those who under an organization of less apparent rigidity might have joined them. They could hold the votes of their own party, but they could not draw the allegiance of others who, though in sympathy with a part of the workingmen's program, were unwilling to place themselves in a conspicuous position upon the Kearneyite platform. The farmers were both unskilled in political maneuvering and unwilling to submit to capable leadership on the part of others. They were, however, highly conscious of their immediate needs and interests, and it seems probable that had the workingmen been willing to accept less than total allegiance, and had they tempered a bit the violence of their views in connection with property rights, the farmers might ultimately have drifted for the most part to their support.

It seems apparent that the major conflicts among the groups were economic in character. Yet economic interests were not the sole determining factors in the matter of alignments. A consciousness of common points of view and common ways of living, or their opposites, were not unimportant. Membership in the legal profession, a profession of recognized aristocracy in American life, provided a bond which drew more or less strongly upon a large percentage of the delegates. There was a common element in the training of all the lawyers that applied directly to the type of situation in which they found themselves involved at Sacramento—an emphatic insistence that political arrangements should be carried out in a strictly orderly fashion. Their legal sensibilities were shocked by the unconventionality of the workingmen. Furthermore, those among them who were regarded as the most successful were retained as the defenders of the interests of the great property-holders of the state. In that capacity they learned to think and to act alike, and to know each other and to become close friends. Even without consideration to their own economic interests such men would tend to flock together in the convention and to defer to the opinions of each other, rather than fraternize with the crude, raw, uneducated and boisterous party of workingmen, or with the farmers who were unable to clothe their raw self-interest under a polished exterior.

On the other hand, the presence of a polished group of lawyers and capitalists of self-admitted superiority, who smiled superciliously at the crudeness of the workingmen, while they skillfully sought to render them impotent in the convention, could only heighten the we-group consciousness of the workingmen and drive them into closer fellowship with each other. The same influence was at work, also, to bring the farmers and the workingmen closer together. The farmers knew better how to work alone than to co-operate, and were suspicious of any organization that would bind them in their actions, yet they also feared the ways of the lawyers whom they were not able to cope with in political strategy. Lawyers and judges, they believed, had in the past done much that resulted in injury to the farmers. Such men were not to be trusted too far in the constitutional convention.

In addition to these factors of influence there were innumerable elements of personality which probably cannot be measured, but which quite obviously to the careful observer seem to have aided in shaping the course of action in the convention. If they are not subject to statistical measurement, or even to general classification, they are closely interwoven with all that took place in the constitutional convention, and they reveal themselves through the coloring which they lend to the story.

CHAPTER IV

CORRALLING CORPORATIONS

SO voluminous was the material dealt with in the formulation of the new constitution that in recounting the story of motivation and the exercise of political technique it is necessary to emphasize the major topics of controversy, and to permit the others to fall into the background. It will be recalled that the two or three decades immediately preceding the date of the convention had witnessed the rapid development of the corporation as a tool in American economic life. There was as yet but a limited body of law dealing with its status and its control. As corporate enterprises grew in numbers and in size, and corporate bodies grew in power, the exercise of the power grew arbitrary, and came into violent conflict with the interests of most men as individuals. Railroad corporations, in particular, seemed to be running wild and wreaking havoc in the places where their coming had been looked to as a boon to prosperity. If they were to serve the country instead of dominate it, they had to be broken to harness, so to speak. Throughout the country for many decades one of the great political and economic problems was that of gaining and exercising control of railroad corporations. The problem was no less serious in California than elsewhere, and its solution was undoubtedly one of the major purposes for which the constitutional convention was called.[1]

As was true in most sections of the country, the early railroads in California were short lines, which were built by a great many different small companies. Most of these companies, however, in one way or another, soon came under the control of the Central Pacific Railroad.[2] The Central Pacific was chiefly in the hands of a few men of tremendous energy, business sagacity, love of adventure, and love of wealth and power. During the decade of the sixties they rose rapidly from positions of local obscurity to national prominence in connection with the first transcontinental railroad. They were Collis P. Huntington, Leland Stanford, Charles Crocker, Mark Hopkins, and David D. Colton.[3] By 1877 their system exercised control over eighty-five per cent of the railroads of California, "including all the lines of importance around San Francisco Bay, except the San Francisco and North Pacific Railroad, and in the Sacramento and San Joaquin Valleys."[4] It was reported to the legislature of 1877-78 that the total railroad mileage in the state was 2,016.44,[5] of which the Central Pacific operated 1408 miles.[6] The Southern Pacific was under lease to the Central Pacific, and was for the most part owned by the same men.[7] This road was being built rapidly to the south and eastward into Arizona, because of the fear that another transcontinental railroad, built by another company, would make connections with Southern California, and provide competition for the Central Pacific.[8] It was believed that the completion of the Southern Pacific at an early date would be likely to prevent the granting of a national

subsidy to a competing road. There was little demand for Southern Pacific bonds, and many of the subsidiary lines in the state were not paying well,[9] so that the profits of the Central Pacific alone had to provide funds for the new construction.

To make matters worse for the builders, Congress began to get uneasy about the funds which the national government had loaned to the Central Pacific. As a result it passed the Thurman bill in 1878, providing for the creation of a sinking fund of twenty-five per cent of the net earnings of the Central Pacific, to pay the principal and interest on the loans.[10] This drew heavily upon the available funds, and caused much despondency among the owners. Colton "declaimed bitterly against the communistic tendencies of the times."[11] In view of the ambitions of the builders, of their need for funds, and of their resentment against the government for interfering with their source of income, it is not surprising that they were not interested in reducing rates where there was no competition, or in making petty adjustments to meet the needs of individual shippers.

In the brief period of the railroad history of the state there had been a great change in public sentiment toward the corporations. At first building had been eagerly encouraged, and cities and counties, authorized by the legislature, had given extensive subsidies for the construction of roads. But the growth of a great monopoly that charged all that the traffic would bear, and discriminated among persons as to charges and services when it found it profitable to do so, brought a speedy demand for regulation in the interests of the people. The case of Los Angeles is a good example. The first railroad built into the city was the Los Angeles and San Pedro, which was completed to Wilmington in 1869. The county subscribed $150,000 in bonds bearing ten per cent interest to the stock company.[12] Shortly afterward the Southern Pacific began plans for a road southward through the state from San Francisco, to run eastward from Southern California into Arizona.[13] In order to have the road pass through Los Angeles the county donated its stock in the Los Angeles and San Pedro road, and five per cent of the assessed valuation of the county, which amounted to $377,000. The city gave $75,000 in stock in the Los Angeles and San Pedro road, and $13,000 besides.[14] Before the road was completed, Rice, the Southern Pacific representative in the city, demanded $250,000 more, saying that if the money was not provided the road would run a few miles east of the city. The citizens made frightened appeals to the United States Senate—Congress had granted land subsidies for the construction of the road along a certain line—and the danger was averted.[15]

The San Fernando tunnel was completed and connections made with the North and East in 1876. Any attempt at regulation was greatly feared by the people, lest it bring an end to further construction. In that year, when the Archer freight and fare bill was before the legislature, the chamber of commerce in Los Angeles met and sent a dispatch "which indicated to our representatives how they would be expected to vote on the matter."[16] One speaker said: "Southern California could never afford to interfere with the further building of railroads here. Our prosperity has commenced with their construction, and it would be suicidal to force them to suspend."[17]

But in a short time the people of the South as well as those in the North were

complaining bitterly of high charges and unjust discriminations. The Los Angeles *Express* complained that the Southern Pacific charged six and one-half cents a mile for carrying certain goods from San Francisco to Yuma, while the rate on the same goods from Los Angeles to Yuma was fourteen and one-half cents a mile.[18] It was soon believed that the company was charging all it could get for transportation, without any equitable system of rates on a basis of service rendered. It was taking full monopoly privileges. The following story illustrates the beliefs of the people as to the type of rate adjustment being made: "On one occasion a shipper approached Stubbs and asked for a rate on a carload of potatoes from San Francisco to Tucson. Stubbs asked him how much he expected to pay for the potatoes and what he would get for them; and having obtained the information, he allowed the shipper a small profit, and took the balance for freight."[19] Whether or not the story was true, its point represented a state of mind on the part of those who did business with the railroads that was anything but friendly. As soon as the builders seemed to interfere with the gratification of the avaricious desires of individuals for more property they lost their popularity.

On the other hand, the builders themselves showed little of altruism or tolerance for the weaknesses of others. After repeated complaints, Charles Crocker went to Los Angeles to investigate the situation. He made some adjustments and sought to quell the discontent. At a meeting of the city council, however, when a speaker made some humorous remarks at his expense, he declared heatedly: "If this be the spirit with which Los Angeles proposes to deal with the railroad upon which the town's very vitality must depend, *I will make grass grow in the streets of your city.*"[20]

The methods of handling incipient competition are well illustrated. The Los Angeles and San Pedro Railroad became a part of the Southern Pacific system in 1873. It ran from Los Angeles to the Pacific at Wilmington, twenty-three miles south. In 1875 Senator Jones, of Nevada, completed the Los Angeles and Independence Railroad between Los Angeles and Santa Monica, a distance of eighteen miles. What happened is described in Crocker's own words: "Now about the Wilmington road. Mr. Jones came here and built a shorter and more convenient road to the ocean than we had. We did what anybody else would have done under the circumstances. We put freight down to $1.00 a ton, and did lighterage for nothing. He reduced freight rates to $1.00 a ton, and did wharfage for nothing. We were both cutting each other's throats. Mr. Jones lost money on his enterprise, and we bought him out, paying him $400,000 less for it than it had cost him to build it."[21] The Southern Pacific razed the warehouse, condemned and half-dismantled the wharf, and set up its terminus at Wilmington.[22] The Los Angeles *Express* declared the need for a state minimum of rates for railroads, as well as maximum rates. "With minimum rates the Southern Pacific could not have competed the Los Angeles and Independence Railroad into bankruptcy, and placed Los Angeles at the mercy of a great corporation."[23]

The merchants of Los Angeles, in order to reduce their shipment charges on goods coming from San Francisco, combined and chartered a steamer to carry freight between San Francisco and Wilmington harbor. Until this time the Southern Pacific had followed the custom of bringing

goods from Wilmington and storing them in its Los Angeles warehouse, without charge for storage, until they could be removed. When the first shipments came in on the new chartered steamer the company brought them to the warehouse, but ordered them taken away at once or a heavy storage charge paid. The merchants, being unable quickly to adjust themselves to the demand, paid heavily on the first shipment of the new venture.[24] The chartered vessel carried goods for three dollars a ton. Coast steamers had been charging as much as ten dollars a ton. They now cut their rates to one dollar, and in a short time the Los Angeles merchants deserted for the cut-rate steamers. The chartered steamer was bought by the Pacific Steamship Company, which was a part of the Central Pacific-Southern Pacific combine. Rates were at once raised to about three dollars a ton. This type of situation gave rise to the report of the transportation commissioners to the effect that "the only competition to which our railroads are subject, is such as may arise on the ocean, or on the interior waters of the state, and the railroad companies have become the owners or acquired control of the steamer lines which navigate these."[25]

The antagonism of Los Angeles business and farming interests toward the great shipping corporations was extremely bitter at the time of the selection of delegates to the constitutional convention. It was not a coincidence that men of the type of Volney E. Howard and J. J. Ayers were selected. Howard was opposed to all corporations. He held that limited partnerships were all that was needed by the state.[26] Ayers was the editor of the Los Angeles *Express*. He had opposed the growth of the railroad monopoly, and had been effective to the extent of losing the Southern Pacific advertising.[27] The Sacramento *Record-Union* was not far wrong when it said, "The southern delegates have come up here hot upon the proposition to 'regulate' corporations, and especially railroads."[28] They had strong motivation to that attitude in the immediate property interests of the people in the community which they represented. If they were short-sighted in their desire to place heavy restrictions upon the corporations which had a very few years earlier been welcomed with enthusiasm and with subsidies, their lack of vision did not detract from the force of their motivation.

The conflict between the people of Southern California and the railroad corporations is illustrative of experience that prevailed widely throughout the state. One more example may be given, however, the experience of Stockton. From the early period of American immigration to California, Stockton had been covetous of the flow of immigrants and the growth of business that came to other parts of the state. In 1852 a meeting of citizens had considered building a turnpike that would capture the immigrant trains which came across the mountains and down to Sacramento.[29] The people looked eagerly to the railroads to bring them prosperity. When plans were proposed for building the Western Pacific from Sacramento by way of Stockton to San Jose, San Joaquin county subscribed $250,000 in eight per cent bonds, running twenty years, for stock in the company.[30] The city council of Stockton greedily refused to grant a right of way through the city, and forced the road to pass outside the corporation. But when the road was built the corporate limits of the city were extended to take in the street along which the road had been built, thus sub-

jecting it to city taxes. The Stanford group, which soon came into control of the Western Pacific, were angered at the treatment which they received from the city council, and were said thereafter to delight in anything they could do that was detrimental to its interests.[31] They set about building a road up the San Joaquin valley, but started it from Lathrop, ten miles south of Stockton, thus denying to the latter place the privilege of serving as the outlet of the valley.

The people of Stockton, feeling that something had to be done about it, started another project. They subscribed $300,000 in seven per cent twenty year bonds to subsidize the Stockton and Visalia Railroad, the bonds to be delivered at the completion of five-mile units. San Joaquin county subscribed $200,000.[32] This road was to run from Stockton up the San Joaquin valley to the same terminus used by the Stanford road, namely, Visalia. However, the city and the county again came to grief. The company which was organized to build the road, instead of starting off with new track, bought fourteen and a half miles of an uncompleted road which ran off at right angles to the direction of the route which had been planned up the valley. At the end of the fourteen and a half miles the company did turn and build up the valley as far as Oakdale, a distance altogether of twenty miles, but it never went to Visalia. It called on Stockton for the bonds, all of which, under the contract, were to be turned over at the completion of the third five-mile unit, and the supreme court of the state declared that the city had no recourse but to deliver them.[33] Stockton later planned a road to Ione, but the Central Pacific circumvented it by building a road from Galt to Ione.[34]

Indeed, by means of the various arrangements of the roads leading out of the San Joaquin Valley, Stockton lost trade rather than gained it. To make matters worse, tariff schedules discriminated against the place. Goods could be shipped from the valley clear into San Francisco at but little more cost than to Stockton.[35] Finally, the Western Pacific had refused to turn over the stock which was to be delivered in return for the county subscription of $250,000, and was seeking to compromise on $100,000 worth of bonds. This matter was in process of litigation when the constitutional convention met.[36] Thus the county was paying large sums annually on interest at seven and eight per cent, on loans to railroads, which seemed to have profited the locality not at all. Of the total expenses of the county government for the year 1876-77 forty per cent went toward the payment of the railroad debt. It is evident that other counties were having similar experiences, since on June 30, 1878, there was a total of $2,938,000 in bonds outstanding for railroad debts in nineteen counties, on which interest rates ranged from seven to ten per cent.[37] The crop failure of the year prior to the date of the convention did not help matters.

San Joaquin county was in a sense unfortunate in her delegates to the convention. Three of the four were farmers who seem to have stood in awe of the eloquent lawyers and the voluble workingmen, and to have been silent members most of the time. It may be noted, however, that the farmers of this region were getting good shipping rates to San Francisco, and had less to complain of than their city brethren. The fourth delegate, David S. Terry, was a resident of Stockton. He was a lawyer, an ex-judge, an able politician, a farmer, an ex-soldier—

altogether a man who knew life from many angles. He was interested in the welfare of Stockton, and worked hard to secure effective control of corporations. He opposed the plan for a railroad commission, however, fearing that the commissioners would misuse their power. The extent of the corruption in the numerous attempts of Stockton to build railroads gave just cause for suspicion of any political agency to which much power was given.

The attitudes illustrated by Los Angeles and Stockton were not, of course, universal throughout the state. There were men both in and out of the railroad business who knew that the rapid development of the state in recent years had been tremendously aided by the railroads, and would have been possible only on a small scale without them. It was believed by some that if the small groups of adventurous railroad builders could do such great things they ought to be permitted some latitude in their relations with the public. The future economic welfare of the state seemed to be dependent upon the success of its men of big business. It was known that Charles Crocker was right when he said that the prosperity of Los Angeles depended upon the railroads, and there were people who had small sympathy for the local business men who were not getting rich enough to please themselves. If the railroads charged all that the traffic would bear, they were matched with an equal absence of altruism on the part of their customers. This fact was realized by many men of sane viewpoint, and was proclaimed with great impatience by certain elements of the press.

The beginnings of railroad regulation were bitterly opposed from many sources throughout the country. Protests were vigorous indeed when the supreme court of the United States declared in the Granger cases[38] that the states had the power to regulate corporations. The Sacramento *Record-Union* proclaimed that the decision in the Munn case embodied "most dangerous and impracticable doctrines."[39] That paper persistently held that the construction of the roads had been managed by private initiative, that of course it was anathema to the builders and their aids to think of surrendering their arbitrary control of their roads, the planning and construction of which had been done solely by themselves, and that it seemed easily possible that the interference of government officials in the business of the roads might be destructive to the possibility of profitable operation and further building.

The builders have been ably characterized as follows:

> The writer's view with regard to the so-called Southern Pacific associates, Stanford, Huntington, Mark Hopkins and Crocker, is that they were rough, vigorous and grasping men, tenacious of the rights of property once acquired, kind-hearted within the circle of their families and intimate friends, but narrow in vision, uneducated, and inexpert in the details of railroad operation, and uninformed in all that relates to questions of public policy.[40]

It was against these men that the greater part of the population of the state were arraigned in a blind but grimly vindictive fashion—against them and the great impersonal organization, sometimes not inaptly called the "Octopus," which they had built up.

Beginning in 1869 the platforms of the political parties in the state gave much attention to the railroad problem. In

that year both the Republican and Democratic parties expressed opposition to state aid for railroads.[41] The Democrats opposed lending the credit of the state or squandering state property on the railroads or other corporations detrimental to public interest and increasing the state debt and taxation. Two years later a Democratic convention opposed the subsidizing of corporations from the public treasury, and called for the repeal of the five per cent subsidy law, which had been passed the year before.[42] A Republican state convention at Sacramento demanded the repeal of the five per cent law, and declared:

> That the subsidizing of railroads or other private corporations, by grants of public land, or by taxation of private property in any form, is contrary to sound maxims of government, productive of great corruption and abuse, and a plain invasion of the rights of the citizen. And we hereby pledge the Republican party to an uncompromising opposition to any and all legislation for such purpose.[43]

Promises were easily made and could be easily forgotten, but the fact that they were made indicates the temper of the public to which they were intended to appeal.

In 1873 a democratic judicial convention favored regulation of rates by the legislature, to leave a fair income to the railroads, but to remove onerous charges.[44] In the same year an independent anti-corporation party was formed around Governor Booth, who had been elected by the Republicans in 1871.[45] The independent party succeeded in electing a majority to the legislature. Its platform declared:

> That we are opposed to granting aid in subsidies of money, lands, bonds, or interest on bonds, to any railroad or other corporation, either by federal, state, county, or municipal governments, and to all laws designed to procure any such subsidies under the specious plea of submitting to a vote of the people the question as to whether or not a particular subsidy shall be granted.[46]

The legislature elected by this party repealed the five per cent subsidy law the following year.[47]

The independent party remained in power only one legislative term. In 1875 its platform proclaimed that there was no safety to good government, to capital, or to production so long as railroad companies made their own rules and regulations, and set freights and fares.[48] It denounced the watering of stocks, as in the case of the San Francisco Gas Company. The Republican convention declared the Central Pacific a state corporation and subject to state laws. The candidate should be pledged to the reduction of freight rates and fares. The convention voted down a resolution which provided that corporations should be kept within the limits of their chartered privileges, "but that it is not wise or politic to force corporations into politics by resolutions pointedly hostile to them and their just interests."[49] The Democrats, who elected the governor and the legislature, asserted in convention that it was the right and duty of the legislature to regulate corporations, to limit their charges, and to compel them to serve all citizens without discrimination at reasonable rates.[50]

The first step toward regulation was taken by the legislature of 1875-76, when it passed "An act to provide for the appointment of commissioners of transpor-

tation, to fix the maximum charges for freights and fares, and to prevent extortion and discrimination in this state."[51] Under the act railroads were required to file a schedule of tariffs with the commission, and to furnish such other information as should be needed by the commissioners in making the report on railroad conditions asked for by the legislature. The books of the companies were to be open to examination by the commissioners. Penalties were prescribed for extortion and discrimination. Three commissioners were to be appointed, to serve for three years, at salaries of $3000 a year.[52] The act provided specifically that freights and fares should not be raised above those of January 1, 1876.

The commissioners appointed pursuant to the act prepared blanks for gathering information, and sent them out to the railroads to be filled in. The reports came in about the first of October, 1876. Almost all of them were quite imperfect, and gave small basis for the compiling of the statistics needed. Where intentions appeared to have been good further reports were asked for. Where the intent to refuse to give information was evident action was brought by mandamus in the third district court, to compel the companies to respond.[53] A decision was rendered for the commission in April, 1877. The companies appealed to the supreme court of the state, and the cases were appointed for hearing in December, 1877. The following companies were involved in the action:[54]

Central Pacific Railway Company
California Pacific Railway Company
Northern Railway Company
Stockton & Copperopolis Railway Company
Stockton & Visalia Railway Company
Placerville & Sacramento Railway Company
Southern Pacific Railway Company
Amador Branch Railway Company
Sacramento Valley Railway Company
San Pablo & Tulare Railway Company
Terminal Railway Company

Thus the Central Pacific combine was lined up in opposition to the efforts of the commission to make a full report on the operations of the railroads in the state.

The commission made a report of its findings to the legislature of 1877-78, without claiming great value for it because of the refusal of the railroads to co-operate. Much that was contained in the report would not tend to add to the popularity of the railroads with the public which they served, nor add to the popularity of the commission with the companies. The prevalence of stock-watering was stressed. "That the fixed capital of most of our railroad companies has been illegally exaggerated or inflated, scarcely admits of doubt. The process of building railroads through the instrumentality of a construction company managed by the same persons who control the railroad company, has grown, of late, to be familiar; it may be called common knowledge."[55] The managers of the companies awarded to themselves for the construction of the roads grossly exaggerated sums in mortgage bonds and stocks of the railroad companies, thus giving a high fictitious valuation to the capital stock of the companies, upon which the valuation was supposed to be based. Instances of this type of operation were cited in the case of the Southern Pacific.[56] An account of the discrimination in rates against Stockton and in favor of San Francisco was given. Another case was

that of transportation between San Francisco and Los Angeles. "Quite recently the active competition between the railroad and steamer lines carrying between San Francisco and Los Angeles resulted in an arrangement for pooling and dividing the earnings of the two lines at rates of freight, etc., to be agreed on." The statute creating the board of commissioners provided that rates should not be raised above those of January 1, 1876. The Southern Pacific line had not been completed to the south at that time, hence, no rate had been set. Nevertheless, when the Los Angeles merchants made complaints to the board it ordered a reduction of the recently established charges.[57]

The report told of the resistance to its efforts on the part of the railroads, and recommended that the commission be given sufficient additional power to make itself effective. In the matter of the classification of freights it said, "The commissioners should be empowered to investigate the subject here and abroad, and for that purpose examine witnesses and compel their attendance, and to consent to such changes in classification as may tend to produce uniformity among the various companies, or failing that, to recommend a classification to the legislature."[58] In January, 1878, the commission recommended four bills to the legislature to remedy the evils stressed in the report. One was to give increased power to the board, another had to do with police power on the roads, a third prescribed rules for the regulation of freights and fares, and the fourth dealt with discrimination among localities.[59]

It is not surprising, in view of the usual attitude of the Stanford group to all opposition to their policies, that they set about to defeat the board of commissioners in the legislature of 1877-78. The evidence is circumstantial, perhaps, but it comes from a great variety of sources. Colton wrote to Huntington early in the session, "I do not think this legislature will hurt us very much, for we looked at that matter in advance; but if we had not looked after the senate they would try to steal all we had before their adjournment."[60] Comments on the legislature from three different newspapers are illuminating. Said the Sacramento *Bee,* at the close of the session:

> The operations of the lobby during the recent session of the legislature illustrate the discomforting fact that the Third House has become strong enough and sufficiently trained in the artifices of the profession to overwhelm an ordinary legislature."[61]

The San Francisco *Alta* said in like vein:

> We do not remember that any previous legislature in this state ever got the repute of being under the control of a couple of lobbyists. Although this statement could not be verified if it were true, since we can never ascertain motives in such cases, and may be gross exaggeration, still it is current among Democrats as well as Republicans, and will be long remembered.[62]

In the following year the San Francisco *Chronicle* said boldly:

> At the last session of the legislature Leland Stanford and a corps of trained lieutenants openly manipulated the fight which culminated in the destruction of the railroad commission.[63]

At any rate the legislature passed a bill entitled "An act to create the office of commissioner of transportation, and to define its powers and duties; to fix the maximum charges for transporting pas-

sengers and freights on certain railroads, and to prevent extortion and unjust discrimination thereon."[64] This commissioner was to be the "legal successor to the present board of commissioners of transportation." Instead of repeating the provision of the former act that freight and passenger rates should not be raised above those of January 1, 1876, this act set the date at January 1, 1878, thus removing the ban upon any rates that had already been raised in spite of the orders of the commission. The bills proposed by the commission were indefinitely postponed, or disregarded.[65] Corporation reports, in the future, were to be made to the legislature instead of to the commissioner, and no provision was made for gathering information which the corporations refused to give. The cases of the commissioners against the railroads were postponed from time to time, at the requests of railroad counsel and against the protests of the commissioners, until the commission was abolished by the legislature, and the cases were dropped.[66] Regulation, for the time being, was effectively stifled. This was the situation when the constitutional convention assembled. Many of the delegates were chiefly interested in the solution of this problem, and all were impressed with its importance.

Between October 9th and November 12th twenty-seven bills relating to corporations were introduced in the constitutional convention, and referred to the committee on "corporations other than municipal." Some covered only one point, others attempted to cover every conceivable point relating to the subject. Nine of these bills dealt specifically with railroads. The committee, of fifteen members, was appointed by President Hoge on October 9th.[67] The chairman was M. M. Estee, a prominent lawyer from the first congressional district. He had worked with the conservative group in the organization of the convention. However, he had been widely known as a liberal in politics, and as an advocate of railroad regulation.[68] Although the conservatives were in nominal control of the convention it seems probable that it was in response to a highly insistent popular demand for regulation that he was appointed to this strategic position. Of the fourteen colleagues originally appointed to serve with him only one, Clitus Barbour, was to take any prominent part in debates on the proposed article, either before the committee of the whole or before the convention. Barbour was the only one of the thirty workingmen from San Francisco on the committee. Two rural workingmen were appointed. Barbour would probably be able to control the votes of the workingmen, but he had little influence elsewhere. Since the other committeemen were for the most part not skilled in parliamentary usages, and left the support of and opposition to the proposed article to others, the responsibility for the article seemed to devolve upon Estee, in so far as the original appointees were concerned.

The delegates from the southern part of the state, the source of much bitter hostility to the railroads, were not represented on the committee. They determined to fight for representation. J. J. Ayers, seizing an opportunity after a motion had just been approved to add certain members to another committee, moved that the convention having now done justice to San Francisco by a readjustment should do likewise for Los Angeles by giving representation on the committee on corporations.[69] Henry Edgerton, who was bitterly hostile to railroad regulation,[70] moved a point of order. Ayers replied

that it was in order for San Francisco, and he thought that it was in order for Los Angeles. He asserted "That to the people of that end of the state the question of railroad discrimination is of vital importance. We have over four hundred miles of railroad in that portion of the state, and this committee will have to deal with the subject; and we would like to have that portion of the state represented on the committee; and we ask that General Howard and Mr. West be added to the committee."[71]

The point of order was pushed and granted, after which action Byron Waters, of San Bernardino, moved a suspension of the rules. The rules were suspended, and the two men were added to the committee.[72] West was a farmer, elected on the farmer-workingman ticket. His vote counted for strict regulation of corporations, but he did not take a prominent part in the debates. Howard was trained in law, and had had practical parliamentary experience in the Texas constitutional convention and in the thirty-first and thirty-second congresses.[73] He declared that corporations were not essential to the state at all, and insisted on their effective control. Howard and Estee, the chairman, were the only thoroughly capable men on the committee. It seemed quite evident that an article providing for the regulation of corporations would be proposed.

A report of the majority of the committee was presented to the convention October 30th,[74] and ordered printed. It contained fourteen sections on corporations in general, followed by nine sections dealing specifically with railroads, and one providing for enforcement legislation. Two workingmen did not sign the report, but presented on November 11th a minority report, providing generally for more extensive control of corporations.[75] On that date the convention in committee of the whole completed its discussion of the report of the committee on executive department, and on November 12th the report of the committee on corporations other than municipal was read. The convention resolved itself into committee of the whole, and discussion was begun.

Estee made the opening speech, talking for nearly two hours.[76] He did not concern himself with the sections dealing with corporations in general, but turned at once to that part of the article dealing with railroads. "The result of the action of this convention, if favorable to the report of your committee, will mark a new era in the history of this state; it will stamp upon the organic law of California that right of visitation and regulation of railroads necessary for the protection of the people." The "corrupting influence of corporate power" would be taken from the halls of legislation, and mutual confidence would be established between the producer and the common carrier. Nearly all the great businesses of the country were in the hands of corporations. He attributed the fact to three causes: "First, the difficulty of one man controlling money sufficient to handle such great enterprises; second, the personal, financial, and moral irresponsibility of corporations; and lastly, 'corporations never say die'."

In rising to defend the report of the committee he did not and he was sure the committee did not wish to imperil any of the great interests of the country. The services of the railroads to the country were beyond computation. But they had become a great monopoly. It was the traditional belief that monopolies ought not to exist in a free country, but "monopolies do exist; monopolies will exist; and

in the very nature of things they must exist." Furthermore, he said, and quoted widely to illustrate his point, "where combination is possible, competition is impossible." In recent constitutional conventions the ablest men had recognized the necessity of regulating corporations, not with the purpose of destroying them, but for the benefit both of the people and of the corporations themselves. The United States Senate had recently shown its attitude toward regulation by its action on the Thurman bill. That the states had power to regulate was shown in the recent Supreme Court decision in *Munn* v. *Illinois*.[77]

As to the policy of regulating or not regulating, it could not be decided on a basis of precedent. The railroad problems of the day were new. Some people thought the constitutional provision for a commission unusual and extraordinary, he said. It seemed to the committee that "a commission was the fairest body that could be selected." A commission elected for four years would have ample opportunity to study and pass upon the problems with which it had to deal. "A legislative body coming together once in two years, in session but a comparatively short time, could not give to this question such consideration as the magnitude of the subject demanded." Another chief reason was that it got rid of the great corrupting influence in legislative bodies.[78] While it might be easier to buy three men than one hundred and twenty, yet responsibility placed directly upon men made them honest, conservative, and capable. The committee thought especially important the provision prohibiting discrimination. Corporate interests objected to it, but it was not an invention of the committee. Similar provisions were to be found in the constitutions of Pennsylvania, Missouri, and Illinois. In adopting the article the convention was not experimenting, except as it was an experiment to provide for a commission in the constitution.

The struggle for and against regulation was now on. J. J. Ayers wrote to the *Express,* in Los Angeles:

> Stanford is here forming his line of battle. He is fighting the report earnestly, and it is evident he is determined to defeat it if possible. I think we are strong enough to carry all propositions that are defensible. Some men may fall in the struggle, but I think there is backbone enough in the convention to withstand both the blandishments and frowns of the great power we are trying to bring under the control of the law.[79]

The sections of the article were taken up one by one and read to the committee of the whole, and amendments were moved and debated. The first section, as left by the committee, provided that corporations should be formed under general laws, and not by special act, and that laws concerning corporations should be subject to alteration or repeal.[80] Section two dealt with the security of dues from corporations, and was discussed but briefly, for it was with the third section that the resolute struggle for the protection of individuals against losses through corporations was to begin. It had to do with the liability of stockholders for corporate debts. J. V. Webster, a farmer from Alameda county, offered the following substitute for the section proposed:

> Each stockholder of a corporation or joint stock association shall be individually personally liable for his proportion of all the debts and liabilities contracted or incurred during the time he was a stockholder, as the amount of stock or shares owned by

him bears to the whole of the subscribed capital stock, or shares of the corporation or association, and also for a further sum at least equal to the par value of his stock, any contract or agreement to the contrary notwithstanding.[81]

S. M. Wilson declared his opposition to the substitute. It would result in discrimination against Californians and in favor of foreign corporations, he said. Foreign corporations could and did operate in the state without any individual liability. To place this restriction upon domestic corporations would put them at an unfair advantage. In a majority of cases the stockholder did not participate in the management of the business, and was innocent of blame in case of disaster. If individual liability were increased "We will drive the capitalists of California out of business and abandon almost all business to these foreign corporations and capitalists, because California capitalists will say, I cannot invest my money in an institution where I may not only lose my entire original capital contributed, but also all my original stock, and I will therefore have nothing to do with the enterprise."[82]

J. S. Hager said he had examined several other state constitutions, and in none had he found any provision making each stockholder personally liable for all the debts and liabilities. The provision would not bring capital to the state, and might drive it away. He knew that there was a prevailing prejudice against capital and capitalists, a prejudice which had manifested itself in the convention, but not all stockholders were capitalists by any means.[83] Volney E. Howard was opposed to the provision because it would lead men to dispose of their stock when business became bad, so that creditors of corporations would have nothing permanent to look to. "But I am in favor of abolishing corporations altogether, and substituting limited partnerships."[84] C. W. Cross, workingman lawyer from Nevada county, favored the provision. He showed how companies organized for mining purposes sent men to the mines to work, but refused to pay wages if the mines failed to yield, and the stockholders in the corporations could not be made responsible for the debts. He thought the amendment would effectually put a stop to these abuses.[85] D. W. Herrington, workingman lawyer from Santa Clara county, declared that the provision was to protect the interests of the people and not of the moneyed corporations, whether foreign or domestic.[86] J. McM. Shafter expressed hostility, believing that the liability of stockholders should be entirely wiped out. He thought it would be of no practical benefit to the creditors of the corporations. The stocks usually stood on the books in the name of a trustee, not of the owner. The creditor ought to discover who was the real owner, and then he could trust him or leave him alone. He did not see why the state should constitute itself the dry nurse of every individual citizen in the country.[87]

After much debate the proposed substitute section was divided before the words "and also for a further sum", and the first part was adopted by a vote of eighty-one to forty. The second part was voted down, forty-four votes being cast for it.[88] Clitus Barbour and other workingmen sought to amend the article further by adding a provision concerning the liability of directors and trustees of corporations. Through a point of order they were denied the privilege of offering the amendment, but D. S. Terry presented it the following day. This amend-

ment provided that the directors or trustees of corporations and joint stock associations should be jointly and severally liable to the creditors and stockholders for all moneys embezzled or misappropriated by the officers of such corporation or joint stock association during the term of office of such director or trustee. It was discussed for two days, and the debates took up nineteen pages of the record. The friends of the measure urged that it would remedy a notorious abuse, that of neglect of duty by directors and resultant loss to patrons. Terry declared: "I know one case where the by-laws of a bank required that the directors should once every month examine the books, count the money in the vaults, and examine into the business generally, and it came out in evidence that they had performed that duty one time in three years. This is for the mere purpose of preventing such neglect of duty.[89] Said G. A. Johnson, if the directors were responsible for embezzlement or misappropriation by the officers whom they employed they would "select them with a view to their own liability, and also to the responsibility of the persons so chosen. For their own protection they may require bonds from their appointees, if they so desire."[90]

Henry Larkin said that the names of men were used by banks to get deposits under false pretenses. Money was deposited because certain reputable men were supposed to be directors, who had no connection with the banks. "The money deposits of these savings banks rest upon the honor of the directors. Because there are directors named who have high standing in the community, people put their money in the bank and deem it safe."[91] Placing the responsibility upon directors would prevent the lending of names to doubtful projects. Some of the workingmen had suffered personal losses or had been closely connected with business disasters which were due to the mis-use of funds by the officers of corporations. One had lost money in the French Savings Bank, where the man responsible for the deficient funds had been discovered, and had taken his own life.[92] Another had been employed by a corporation organized by wealthy directors, and could get no pay for his work but certificates of stock.[93] Another told of losses due to mis-use of funds by officers in the Bank of California, the Pioneer Bank, and the Odd Fellows' Bank.[94] As these expressions indicate, the motivation of the proponents of the measure was quite obvious.

The opponents asserted that if the measure were adopted it would be impossible to get any business man to take the position of director. Said T. B. McFarland, "I suppose the object is to drive the corporations out of existence as much as possible, but if that is to be done, if the gentlemen desire to abolish corporations, they ought to put the matter directly before us, and vote on it."[95] A. P. Overton, president of the Santa Rosa Savings Bank, thought that if the clause was adopted many banks in this county could not get boards of directors.[96] S. M. Wilson[97] and others argued that the amendment was wrong in principle. It was necessary that officers be trusted. Business could not be carried on otherwise. After exercising their best judgment and giving the most careful scrutiny to the affairs of the corporation the directors might yet be unable to prevent losses, and for these losses they ought not to be held responsible.

M. M. Estee, chairman of the committee on corporations other than municipal, stated that he was in favor of the amendment in part, but that extending the re-

sponsibility of directors to "misappropriation" was going too far.[98] Later he insisted that if the amendment should be adopted and made a part of the constitution it would be too heavy a load to carry. He felt that "if this amendment, as drawn by the gentleman, should be adopted, it would have a very marked effect in loading down this article on corporations, which I look upon as one of the most important to the people of any in the proposed constitution."[99] A. C. Freeman said later of Estee's attitude, "As I listened to his speech I came to the conclusion that he was for this proposition; as I listened further I came to the conclusion that he was against the proposition; and finally I came to the conclusion that he was on all sides of the proposition."[100] Volney E. Howard sought to modify the amendment by restricting it to cases of negligence only.[101] It seems probable that the concern of both Estee and Howard was to keep the first half of the article on corporations within such bounds as would make it widely acceptable, in order to get carrying power for the specific provisions with regard to railroads which were contained in the later sections.

The amendment was adopted November 14th, in the following form:

> The directors or trustees of corporations or joint stock associations shall be jointly and severally liable to the creditors and stockholders for all moneys embezzled or misappropriated by the officers of such corporation or joint stock association.[102]

Eighty-eight votes were cast for the amendment. J. J. Ayers wrote to the Los Angeles *Express:*

> If this is an index of the complexion of the convention on the great monopoly question, Stanford might as well stay at home, for the day when public affairs can be run in his interest is past, and the people themselves will hereafter resume the government of the state.[103]

The debates show that the opposition to the amendment came from the leaders of the conservative group, including McFarland, Barnes, S. M. Wilson, Shafter, Edgerton, Belcher, and others. Eleven workingmen were among those who spoke in support of the measure, and since the workingmen were organized to act together it seems probably that fifty votes were cast by them for the amendment if all were present. Since the total affirmative vote was eighty-eight, the negative vote, assuming that all were present, would be sixty-four. (Nine delegates, including two workingmen, were absent at roll call on the morning of the day on which the roll was taken.) The total number of delegates who were not workingmen was one hundred and two. Hence, more than half the non-workingmen voted against, or at least did not vote for the amendment. It may therefore be assumed that had a San Francisco delegation been chosen on other than sand lot issues, with a personnel representing a diversity of elements rather than this particular element, the amendment would not have passed. Still, it could not have been passed by workingmen alone, and as a matter of fact it did draw at least thirty-eight non-workingmen votes.

While too much importance must not be attributed to the vote-determining influence of speeches before the convention it is of interest to note what happened in this instance. Thirty-seven delegates spoke one or more times. Twenty-seven of them were lawyers. Of the fourteen who took positions against the amendment

twelve were lawyers. Of the twenty-one who spoke in support of the amendment thirteen were lawyers, one was a farmer, and seven were workingmen of a variety of manual labor occupations. Two lawyers temporized in their positions to such an extent that it was difficult to tell where they stood. In appearance, at least, a predominant part of the work of the convention on this measure was done by lawyers. Whether this was true in more than appearance it is hard to say. If it was, and if this situation is typical of the work of the convention in general and of most political conventions, it is highly significant.

Sections four to sixteen inclusive, all dealing in some way with corporations, were taken up and discussed, some of them briefly and some at length.[104] All related intimately to the life of the state and to conditions which were the product of the changes which had taken place since 1849. Though these discussions are rich in the information which they convey it seems well, for our study of motivation and political technique, to pass on to section seventeen, which was the first to deal specifically with railroads. It declared that "All railroads, canal, and transportation companies shall be common carriers and subject to legislative control." Railroads were to have the right of intersection, connection with, and crossing over any other railroad, and were to "receive and transport each other's passengers, tonnage, and cars, loaded or empty, without delay or discrimination."[105]

C. C. O'Donnell, workingman, moved that a provision be added to the effect that the legislature should establish a tariff of freights and fares for all railways in the state. J. J. Ayers urged that the amendment be voted down, saying that the state had trusted long and patiently, but in vain, for the legislature to handle that question. It was time for the convention to take the matter into its own hands, and the report of the committee provided in other sections for the control of freights and fares.[106] M. M. Estee said that the amendment would destroy the harmony of the article.[107] J. E. Hale pointed out that a vote on the amendment would be, necessarily, a test vote on more than appeared on the face of the amendment, since its adoption would be a blow, if not a death-blow, to the plan for a railroad commission.[108] At the end of Hale's speech O'Donnell withdrew his amendment.

Clitus Barbour offered an amendment which declared railways and navigable canals in the state to be public highways, and explained that he meant to provide that any person might put cars and locomotives on the roadbed of the railroad company, subject to regulation by law.[109] Volney E. Howard offered an amendment to the amendment providing for compensation to the railway or canal for such use.[110] Estee said that the Barbour amendment had been presented to the committee, and that the committee had voted it down, believing it better to pursue a middle ground rather than to go to such extremes. He believed that railroad operation was of such a nature that it could be effective only under the management of a single organization.[111] Some further opposition was expressed, and on the following day, Barbour having accepted the Howard amendment, Estee moved to amend the amendment by a section as corrected by the committee on corporations.[112] The corrected section was adopted, and the provision of the Barbour amendment was wiped out. The amendment as amended was then adopted.

Section eighteen provided that directors, officers, agents and employees should not be interested in the business transactions of transportation companies, other than in their official capacity. The purpose, as explained by Clitus Barbour, was to prevent such abuses as those referred to by the board of transportation commissioners, in which the directors formed companies, took contracts from themselves, and paid themselves at exorbitant rates.[113] The section was accepted without a great deal of debate, except as to the exact interpretation of the proposed phraseology. Section nineteen, relative to the granting of free passes, was also accepted with little discussion. The next section read as follows when first presented:

> No railroad company, or other common carrier, shall combine or make any contract with the owners of any vessel that leaves port or makes port in this state, or with any common carrier, by which combination or contract the earnings of one doing the carrying are to be shared by the other not doing the carrying.[114]

J. J. Ayers proposed the following as an addition to the section:

> and whenever a railroad corporation shall, for the purpose of competing with a rival railroad line, lower its rates for transportation of passengers or freight from one point to another, such reduced rates shall not be again raised or increased from such reduced standard.[115]

The principle had worked for a time in his part of the state, he said. When the Southern Pacific had lowered rates on the Los Angeles and San Pedro road for the purpose of driving the Los Angeles and Independence out of business the O'Connor act had been passed, fixing maximum rates at those of January 1, 1876. When the competition was over it was discovered that the rates under which roads had been operating were below a living rate, but the law prevented their being raised.[116] He wanted this provision in the constitution to prevent the temporary lowering of rates below the cost of operation in order to kill off a rival. He said, "At the present time I know, that if that protection were in the constitution, the people of my section of the state would disenthrall themselves from the oppression now put upon them, and build a road, provided the great corporation could not come in and crush it out by ruinous competition with them, lowering the rates until this result could be accomplished, and then raising them again, making up for loss afterwards."[117]

The Ayers amendment was debated at great length. The workingmen favored it. M. M. Estee opposed it because the abuses which it was intended to remedy were to be taken care of under the two sections which followed.[118] J. E. Hale opposed it because he thought its adoption might have a tendency to prevent the adoption of the plan for a commission, to be presented in a later section.[119] S. M. Wilson illustrated an objection by saying that the Central Pacific was heavily in debt to the national government. If its rates were reduced below a living rate and if it were forbidden to raise them again, as provided in the proposed amendment, no one would have the power of making the readjustment necessary for the meeting of its obligations to the United States.[120] To this D. S. Terry replied succinctly, "Well, if the railroad company, by putting down their rates, choose to commit hari-kari, for myself I have no objection to it."[121]

Up until this time the sections had been introduced one at a time, and debates were for the most part limited to the section before the committee. But in the discussion of the Ayers amendment the debates began to range over the two succeeding sections, one providing against discrimination in railroad charges and services, and the other providing for a railroad commission. Little effort was made to restrict the range of debate, for it was recognized that there was no distinction of principles involved. The text of section twenty-one was as follows:

> No discrimination in charges or facilities for transportation shall be made by any railroad or transportation company between places or persons, or in the facilities for the transportation of freight or passengers within this state, or coming from or going to any other state. Persons and property transported over any railroad, or by any transportation company or individual, shall be delivered at any station, landing, or port, at charges not exceeding the charges for the transportation of persons and property of the same class in the same direction to any more distant station, port, or landing. Excursion and commutation tickets may be issued at special rates.[122]

Section twenty-two as introduced provided:

> Three railroad commissioners shall be elected by the qualified voters of this state, at the regular gubernatorial elections, and whose salary shall be fixed by law, and whose term of office shall be four years. They shall be qualified electors of this state, and shall not be interested in any railroad corporation, or other transportation company, as stockholder, creditor, agent, attorney, or employee, and the act of a majority of said commissioners shall be deemed the act of said commission. Said commissioners shall have the sole power, and it shall be their duty, to correct abuses by railroad corporations, or other transportation companies; establish rates of charges for transportation of passengers and freight by railroad or other transportation companies, and publish the same from time to time, with such changes as they may make; report to the governor, annually, their proceedings, and such other facts as may be deemed important; hear and determine complaints against railroad or other transportation companies; affix penalties and enforce them through the medium of the courts, and perform such other duties as may be prescribed by law. Nothing in this section shall prevent individuals from maintaining actions against any such companies. It shall be the duty of the legislature to confer all such further powers on the board of railway commissioners as shall be necessary to enable them to perform the duties enjoined on them in the foregoing sections.[123]

The two remaining sections provided for the districting of the state for the election of the commissioners, and the legislation for the enforcement of the article.

Section twenty, with the Ayers amendment, was presented on the 20th of November. From that time until the completion of the discussion of the article in committee of the whole, on December 7th, debate was centered around sections twenty, twenty-one, and twenty-two. The speeches made during that time took up nearly one hundred fifty pages of the

record. They covered all phases of the problems involved, from the question of the right of the state to regulate at all to the matter of regulating corporations out of business. If a transportation commission was to be created there was much disagreement over the method of choosing the commissioners, whether by popular election or by appointment by the governor. Many thought that too much power was being given to the commissioners, and that men could not be found who could withstand the temptation placed upon them.[124] Lengthy speeches concerning problems of railroad finance and operation, polished into fluent and smoothly flowing orations, were interspersed with the sharp, rough utterances of workingmen and farmers. Amendments to proposed sections were offered, and other amendments were presented to wipe out the intent of their predecessors.

But although the oratorical forces of the convention were centered upon these sections, and particularly upon section twenty-two, the alignment revealed little difference from that taken on previous sections. Opponents of regulation outdid themselves here in efforts to prevent the adoption of the sections, or to secure amendments that would render them innocuous.[125] Men who were out to fasten state control upon the railroads outdid themselves also in fluent appeals. But on neither side did the speeches reveal other prominent sources of motivation or other conclusions with regard to major issues than those already disclosed. S. M. Wilson, W. H. L. Barnes, Henry Edgerton, T. B. McFarland, J. McM. Shafter, and others who had previously stood together in efforts to resist regulatory provisions, took the lead in opposition here also. There were details of differences, but in the main their positions were just the same. M. M. Estee, Volney E. Howard, J. J. Ayers, Alexander Campbell, J. E. Hale, J. S. Hager and others who had for the most part worked together in the shaping of the earlier sections were together on essentials in the battle of words over the final sections. The workingmen were for the most part lined up with this latter group. The Los Angeles *Express* reported that on December 3rd a sub-committee of the committee on corporations, composed of Estee, Howard, Barbour, Winans, Reddy, and Schell, was appointed to meet with a committee of workingmen, Wyatt, Barry, Cross, and Joyce, to discuss the section providing for a railroad commission. The grange representatives on the committee had already met and considered it. As a result of the meetings of these interested factions in the convention a substitute section was agreed on, embodying most of the important provisions previously stressed.[126]

By December 7th all the sections of the article had been considered by the committee of the whole, and on that date the committee recommended that the article be printed as amended and placed on the calendar.[127] The liberals were overjoyed. The attitude of the conservative press of the state is indicated by two quotations. Said the San Francisco *Argonaut:*

> Judge Terry of San Joaquin, Volney Howard of Los Angeles, Timms of Trinity, and Larkin of El Dorado, — all democrats, thank God! — are developing themselves into agrarians and communists of a type quite as pronounced, more dangerous, and less respectable than that of the sand lot leaders whom they are anxiously endeavoring to supplant.[128]

Said the Sacramento *Record-Union:*

> This (the committee report) in-

cludes the commission scheme, which is unquestionably the most oppressive, inequitable, anti-republican scheme ever evolved by a body pretending either to probity or intelligence.[129]

The article was taken up by the convention on January 29th, and considered for three days.[130] Efforts were made to amend section three in such a way as to modify the provision that directors and trustees were to be responsible to creditors and stockholders for all moneys embezzled or misappropriated by officers. Support was given by the same groups that had fought the provision in the committee of the whole. They were not able to effect a change. S. M. Wilson offered an amendment to section twenty-two to the effect that no member of the constitutional convention was to be eligible to the office of railroad commissioner at the first election under the new constitution.[131] The amendment was voted down, thirty-seven to eighty-five.[132] Efforts were made to modify or destroy the commission scheme. They were supported by the men who had taken the same positions in the committee of the whole. Volney E. Howard insisted that these attacks were proof of the hostility of the railroads toward the plan for a commission, "if anything was wanting to the letter of the president of the Central Pacific Railroad Company, which was written expressly to attack this commission."[133] Howard claimed to have evidence that Stanford had favored a railroad commission, but that his associates in New York had written back that it should "be opposed and defeated at all hazards."[134] None of the efforts were successful in modifying the section from the form recommended in committee of the whole, and it was adopted as a part of the article by a vote of ninety-two to twenty-eight. Two workingmen voted against the section. The article was ordered engrossed and read a second time.[135] On the second reading the article was adopted as a part of the constitution by a vote of eighty-three to thirty-three. It was then referred to the committee on revision and readjustments.[136]

Except for taxing provisions this article embraced the principal provisions of the constitutional convention for effective regulation of corporations.[137] It was not as severe as the workingmen would have made it, but it went much farther than most corporation sympathizers would have had it go. The highly controversial discussion ranged over a period of more than three weeks, while the maximum time which the enabling act provided for the entire convention was only one hundred days. The apparent defeat of the corporation interests marked the beginning of hostility to all acts of the convention by a large section of the press. This hostility gave promise of a bitter fight to prevent the adoption of the new constitution when it was presented to the people.

The article seems to have been the logical outgrowth of the experience of the state with its corporations. The people of the state, with an eye to the rapid acquisition of wealth for themselves, had voted liberal subsidies for the building of railroads, and had given them support and encouragement in every way. The railroads soon came under the control of a few men whose concern had to do with their own pocketbooks or with the welfare of their projects, rather than with turning the utmost number of coins into the hands of their customers. Narrow self interest on both sides resulted in irritating friction between the railroad managers and the people, with the result that the people sought orthodox means of political control for the railroads, and

the representatives of the corporations used their ingenuity to prevent its being exercised. When the legislature made provision for a board of commissioners, a tool which was being adapted for the purpose in many of the states, the railroads resisted and succeeded in getting the board legislated out of existence. The board had seemed to be doing excellent work, and it is not surprising that men who sought means for effective control of railroad corporations fought for the establishment of a similar commission through the new constitution and the guarantee of its powers in such a way that they could not be restricted by subsequent acts of the legislature.

It was true that at that time the commission was a relatively new tool for the purpose for which it was being used, and its permanent effectiveness remained to be demonstrated. Some men who were heartily in favor of regulation opposed this particular plan because of the possibility that commissioners might abuse the powers conferred upon them. The majority, however, were much more impressed by the excellence of a commission which had been martyred by the corporations which they sought to bring within the limit of state control than by the possibility that a new commission would become a corrupt organization, the tool of the corporations which it was created to control. Anyway, it was said, the legislature had failed the people in the past, and a corrupt commission could not make matters a great deal worse than they were. It is to be noted here, as also in the case of many other articles in the new constitution, that the delegates looked upon themselves as more truly the representatives of "the people" than any subsequently chosen legislators, and thought it their duty to include a large amount of important legislation in the constitution, where it would not be easily subject to change.

CHAPTER V

THE BURDEN OF TAXATION

THE pinch of hard times in the decade of the seventies threw added weight upon those who bore the burden of the taxes levied in the state. There was much dissatisfaction with the existing system of taxation, and the desire for a change had had much to do with stimulating the interest of the people in a constitutional convention. Delegates stated again and again that they were sent to the convention with instructions to secure certain tax provisions in the constitution, and that the need for these provisions was the chief cause for the calling of the convention. Only one section of the constitution then in force had anything to say on the subject. This section, incorporated in the article on miscellaneous provisions, read as follows:

> Taxation shall be equal and uniform throughout the state. All property in the state shall be taxed in proportion to its value, to be ascertained as directed by law; but assessors and collectors of town, county and state taxes shall be elected by the qualified electors of the district, county or town in which the property taxed for the state, county or town purposes it situated.[1]

The term "property" was not defined, and provisions for carrying the section into effect were apparently left to the legislature.[2] The period of nearly thirty years during whcih the constitution had been in force had seen a great variety of legislative acts for the levying of taxes and the raising of revenue. Possibly it was well that much had been left to the legislature, for great economic changes had taken place in the life of the state. More than eight hundred thousand people now lived where there had been less than one hundred thousand in 1849, and most of the first comers had classified as transients, at that. Agricultural interests had grown to importance equal to or greater than that of mining, and, with the coming of the railroads, shipping and manufacturing interests were rapidly taking on importance.

Widespread feeling centered most keenly around the angle of the tax problem which had to do with the taxing of mortgages on farms. From the time of the first California legislation on the subject credits secured by mortgages were regarded as property, and were taxed as such to the holders of mortgages. Except for one year, following legislation in 1852,[3] the amounts of credits on which mortgagees were taxed were not deducted from the amounts on which the mortgagors were taxed. Nominally the mortgagor paid taxes on the full value of his property, regardless of the debt against it, while the mortgagee paid on the full amount of the money which he loaned. As a matter of fact, however, it was usually arranged in agreement between debtor and creditor that the debtor should pay the taxes on both the property and the loan. It "was the universal custom for mortgagees to incorporate in mortgages a stipulation binding the mortgagor to pay all taxes that might be levied on the

mortgage or debt secured thereby."[4] The agreement frequently provided that the mortgagor should put up a deposit sufficient to cover the amount of the tax on the mortgage,[5] or on the money which it secured. The supreme court of the state ruled that it was not the mortgage itself that was subject to taxation, but the money which it secured.[6]

In 1868 a lender sought to prove before the supreme court that the system resulted in double taxation. The court replied that "The lender owns the debt, and the debt is property, its value depending on the sufficiency of the security, if there be security, and the ability of the borrower to pay the debt. . . . If the property of the borrower is assessed at its full value without any deduction for what he owes . . . perhaps he may complain on undue or double taxation."[7] Four years later a mortgagor brought a case before the court, complaining that his property had been taxed at its full value without deduction of the amount of the debt, and that since the debt was also taxed he was the victim of double taxation. The court dodged again by ruling that it was not the concern of the mortgagor that the mortgaged debt was taxed to the holder. His own property was not taxed twice.[8]

Popular agitation on the subject led to action by the legislature. At the session of 1869-70 an "act to prevent double taxation" was passed, the first section of which read as follows:

> No mortgage or lien given and held upon real estate, or the debts thereby secured, or promissory notes secured by mortgage, shall be assessed on the books of any assessor, state, county, or otherwise."[9]

Laws inconsistent therewith were repealed, and the act became effective immediately. This section was also incorporated in another act which provided further:

> All moneys of borrowers left with any savings loan society, corporation, firm or individual, as security for or indemnity against the tax upon any mortgage or the debt secured thereby, shall be refunded to the person or persons owning the same, within six months after the passage of this act.[10]

These provisions were short lived, however. The legislature of 1871-72 adopted the newly compiled code, which supplanted all previously enacted laws. Section 3607 of the political code declared:

> All property within this state, except property of the United States, of the state and of municipal corporations, is subject to taxation.

Thus the acts exempting solvent debts secured by mortgages were repealed. About the same time they were also declared unconstitutional by the supreme court of the state, the court holding that the legislature had no power to exempt property from taxation.[11] Apparently some assessors had declined to observe the laws, for the legislature which adopted the codes passed an act saying that all money collected as taxes on promissory notes secured by mortgages assessed and collected during the previous year were to be retained for the use of the counties which levied the taxes. Thus it was that in both the legislature and the supreme court the opponents of the mortgage tax were defeated. In cases where the deposits guaranteeing the payment of the taxes by mortgagors had been refunded, pursuant to the act of 1870, the lenders had apparently been the losers.

The constitution of 1849 provided that taxation should be equal and uniform, but it did not designate the means by which

equality and uniformity should be secured. County boards of supervisors were made boards of equalization, but there was not a like organization for the state as a whole. It soon became the policy of assessors to under-value property in their respective counties, because of the fact that state as well as county taxes were based on their valuation. In this way they could reduce the proportion of the burden of state taxes to be borne by their respective counties, while county taxes could be made sufficient on the reduced assessment by increasing the rate.[12] It was reported that in one case a county board of equalization reduced the assessment fifty per cent. Even if there had been good faith among the counties, there was little system as to methods of evaluating property, each county using methods of its own.

In 1870 the legislature passed an act creating a state board of equalization, to be composed of the state controller and two appointive members. The board was given the power to equalize assessments among the counties, and to prescribe rules by which the county boards were to be governed.[13] The investigations of the board having shown the chaotic conditions which prevailed, its powers were increased in 1872. It was to fix the state rate of taxation, and to enforce the revenue act of that year. The board issued specific rulings for the assessment of taxes on money and credits, so that assessors had little difficulty in determining what was expected of them. Results were quickly apparent. For instance, the assessment roll of 1871 showed a reduction of about $20,000,000 below that of the previous year, most of which was attributed to the withdrawal of mortgage credits from taxation;[14] as a result of the revenue act of 1872 and of the efforts of the state board of equalization the assessment roll of that year showed an increase of about one hundred forty per cent, a large part of which consisted of money and solvent credits, including mortgages.[15]

In San Francisco, the board of supervisors, sitting as a county board of equalization, ordered the cancellation of more than $35,000,000 in assessment of solvent debts secured by mortgages held by banks in the city,[16] declaring that they were onerous and oppressive.[17] The supreme court of the state declared the action void, and commanded the auditor to place the cancelled assessments on a duplicate assessment roll. The taxes were not paid, and the district court granted an injunction against the sale of the property of the banks. This controversy was also carried to the supreme court. The court ruled that injunction was not the legal remedy, and that relief from double taxation, if such prevailed, could not be secured until the tax had been paid. An attack upon the state board of equalization, made before the court at the same time, in which its constitutionality was challenged, was likewise unsuccessful. Justice Crocket, two other judges concurring, expressed obiter dictum his opinion on the matter of the taxation of credits secured by mortgage:

> In this state the fact is notorious, that in ninety-nine out of a hundred cases the borrower is compelled to stipulate that he will pay the tax on the mortgage before he can obtain the money at the current rate of interest; and if he refuses to stipulate, he will be compelled to pay a higher rate of interest equivalent to the tax, so that the borrower, and not the lender, almost invariably pays the tax.

Again:

> We all know as a matter of general

> notoriety, that almost universally, by a stipulation between the parties, the mortgagor is compelled to pay the tax both on the land and mortgage, and that practically, he is twice taxed on the same value.[18]

Justice Crocket stated that Connecticut had enacted a usury law, at the same time providing that taxes on mortgages should be paid by the lender. The result was that men who had money refused to lend on mortgages at all. The legislature had finally to pass an act validating contracts by which the mortgagor agreed to pay the taxes. Thus, while not directly holding that a tax on credits secured by mortgage was double taxation, the court indicated that it might so decide if a case were properly brought before it. It definitely questioned the long line of decisions which had been handed down on the principle that such a tax was constitutional.

It was not long before another attack was made on the state board of equalization before the supreme court, and this one was successful. The court held that the act conferring upon the board the power to fix the rate of state taxation, "after allowing for delinquency in the collection of taxes," was unconstitutional, as a delegation of legislative power. The power of equalizing taxes was likewise declared unconstitutional, since it was virtually the power of assessor, and the constitution provided that assessors were to be elected locally by the people. Thus the board was shorn of its principal powers, and the state was deprived of an instrument of demonstrated value in the handling of its fiscal problems.

In January, 1876, the supreme court frankly reversed its position with regard to the taxation of mortgages.[19] Banking interests in San Francisco brought suit to recover taxes assessed on several millions of dollars worth of solvent debts secured by mortgages. The court held that credits were not property in the sense in which the term was used in the constitution, and that they could not be assessed as property or taxed as property even when secured by mortgage. Only one of the five judges dissented. Chief Justice Wallace completely reversed the position which he had taken a short time previously.[20] Then he said, "My conclusion on this point is that in so far as the code requires credits to be assessed as property for the purposes of taxation, it is not in contravention of the constitution." Now he said, "A tax upon credits, *in whatever form it be imposed,* must be paid, *not by the creditor but by the debtor.*" "I am of the opinion that credits are not property in the sense in which the word 'property' is used in the thirteenth section of the eleventh article of the constitution."[21] Thus it was that the controversy was apparently settled. The decision was widely and bitterly criticized, however, especially by debtors and tax payers, for it was recognized that creditors were still escaping their share of the burden of taxes. Debtors did not now appear to be carrying a double load, as they had done when they had paid taxes on the full value of their property and again on the money loaned to them, but still they and their fellow holders of tangible property had to pay nearly the total tax bill of the state. Their position did not seem greatly improved. It is not surprising that with the coming of hard times during the seventies this situation was very bitterly felt, and that it was to play a prominent part in the shaping of the new constitution.

The platforms of the political parties for the ten years prior to the date of the

constitutional convention reflect something of the nature of public sentiment on problems of taxation. The Republican state convention of 1869 favored the establishment of a state board of equalization.[22] The Democratic convention of 1871 favored a constitutional amendment to provide a safeguard against taxing private property to aid private corporations — referring chiefly to the subsidizing of railroads.[23] The independent party convention of 1873 declared in favor of taxing all property, including solvent debts, at cash value. Solvent debts were to be so taxed as to avoid double taxation.[24] The Democratic and Republican conventions of 1876 expressed opposition to double taxation.[25] The independent convention of that year said, "Any law which taxes the same capital in any form more than once is a law of discrimination, and should be repealed."[26] Attention was called to the fact that assessors often assessed property lower than its full value. The temperance reform party declared for drawing revenue from accumulated capital, rather than from current products of labor.[27] The platform of the workingmen's convention which was held January 21, 1878 said, "Millionaires and money monopolists are destructive to the happiness and dangerous to the liberty of the people, and we demand that they be made impossible by a proper system of taxation."[28] The provision was stricken out at the time of the adoption of the platform, however, being regarded as somewhat too extreme. The convention of the same party which was held May 27, 1878, favored the taxing of money, mortgages, and bonds. "Debts due by the person assessed should be deducted from the assessable value of his property, and should be assessed against the person to whom they are payable."[29] There was to be equal tax for equal value in land, and growing crops were not to be taxed.

An important condition affecting the problems of taxation was the fact that the ownership of a great part of the land of the state was in a comparatively few hands. Governor Haight said, "Our land system seems to be mainly framed to facilitate the acquisition of large bodies of land by capitalists or corporations, either as donations or at nominal prices."[30] The railroads held large acreages. According to the San Francisco *Chronicle* they had received more than sixteen millions of acres, of which a little less than two millions had been patented to them. They paid taxes on only that part which had been patented. The *Chronicle* complained that railroad land worth at least twelve dollars an acre was taxed at less than four dollars. Grants worth at least one hundred millions of dollars were as good as exempt. Yet six to eight millions of acres of cultivated land paid more than nine-tenths of the taxes.[31] The same paper noted that at least twenty-five millions of acres were held fraudulently, from Spanish and Mexican land grants. There had been great frauds in the disposal of government lands, resulting in their being captured for almost nothing by a few monopolists. These lands also yielded little revenue to the state.

The Los Angeles *Express* said of the land situation in 1877:

> The conflict between owners of great tracts of land held for speculation and the people who own small farms in actual use is not peculiar to the county of Los Angeles. It is one which has been waged all over the state for the last fifteen years, and will continue to be waged until all the great ranches have been cut up into small ownerships.[32]

Assessments of large tracts was difficult, and the great holders got off easy. The *Express* favored a system of heavier assessment. The legislative committee on land monopoly reported a particular evil, saying:

> In order to escape taxation purchasers of such (state) lands frequently omit to record their evidence of title, and consequently the assessors, supposing such lands still belong to the state, omit to enter them upon the assessment roll, while those who record their deeds are promptly assessed and have to pay the taxes which their shrewder (shall we say dishonest?) neighbors through knowledge of this defect in the law are able to escape.[33]

The San Francisco *Argonaut* urged the taxing of great holdings in such a way as to force sale, and so break them up into small estates.[34]

A book published in San Francisco in 1878 stated that four hundred fifty-five proprietors in California held tracts of from five thousand acres up.[35] Prominent among them were Lux & Miller with 500,000 acres, Charles McLoughlin with 255,000 acres, Thomas Fowler with 44,000, and E. T. Martin with 700,000 acres.[36] It was in this period and this setting that Henry George developed his theories on taxation. He was editor of the San Francisco *Post* from 1871 to 1875. For the most part the press of the state was hostile to his single tax doctrine, only the Sacramento *Bee* giving him vigorous support.[37] The *Bee* made persistent attacks upon the condition of land monopoly in the state, and demanded measures for removing the abuse.[38] The feeling was strong among the owners of cultivated land on which heavy taxes were assessed that something should be done to pass a full share of the burden of state expense on to the monopolists who had thus far escaped. The problem was to be faced in the constitutional convention.

As a whole the committee on revenue and taxation in the constitutional convention, unlike that on corporations other than municipal, was composed of men of ability. Henry Edgerton, the chairman, was a lawyer and a former state senator. He was one of the able men among the group who opposed the article on corporations. Eugene Casserly was a former United States senator. Marion Biggs had served in the legislature, and had been president of the State Agricultural Society in 1877. P. B. Tully was a criminal lawyer of ability. J. F. Miller was president of the Alaska Commercial Company. J. McM. Shafter had been a lawyer, a judge, a state senator and a congressman. He now operated a large dairy farm, and was a director and officer in a railroad company.[39] H. K. Turner was a former state senator, and was now a farmer. A. P. Overton had been a lawyer and a judge, and was now president of the Santa Rosa Bank. H. C. Wilson owned a farm of several thousand acres. Clitus Barbour was a workingman lawyer. G. W. Hunterwas a workingman merchant. W. S. Moffat was a workingman farmer. W. H. Prouty was a granger. J. M. Dudley and Daniel Inman were farmers. Thus, at least seven of the fifteen men had had legal training, and six had seen legislative service. There was one banker and one president of a corporation. Eight were in some sense farmers, although the dominant interests of Shafter, and perhaps of others, were probably in other fields. There were only three workingmen on the committee. Of these three only one was from the San Francisco delegation, and he was a lawyer and perhaps

the most able man in his group. An analysis of the committee would easily lead one to expect it to give careful protection to property, with special attention to the interests of farmers, though in view of the fact that Shafter and H. C. Wilson each held tracts of several thousand acres there would be strenuous opposition to placing heavy taxes on large holdings.

The report of the committee on revenue and taxation was taken up by the committee of the whole on December 24, 1878, and discussion was seriously begun on December 26th. The report contained eighteen sections. The first provided:

> All taxes shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax, and shall be levied and collected under general laws.

Henry Edgerton, chairman of the committee on revenue and taxation, moved to substitute for the section the provision of the constitution of 1849 that "Taxation shall be equal and uniform throughout this state." J. M. Dudley, also a member of the committee, moved a further amendment that would leave room for the levying of an income tax. Randolph Swing, of San Bernardino, opposed placing restrictions on the legislature. He asserted that the old restriction which provided that taxation should be equal and uniform had resulted in the courts declaring unconstitutional the laws providing for the taxing of mortgages. He estimated that sixty per cent of the real estate of California was under mortgage. Since it was not known, as a rule, whether a given system of taxation would work well or not, the matter ought to be left to the legislature so it could be changed if necessary.[40]

In the course of the debates J. M. Dudley commented on the fact that credits were taxed for nearly twenty years without general opposition. "The dissatisfaction was confined to the moneyed interests of San Francisco, which sought to reverse that system and secure exemption for certain classes of property." The exemption was secured, and the assessment roll of the state fell off more than a hundred millions of dollars. The tax rate was thereby increased, adding to the burden of those least able to pay. He was aware that talking of taxing credits immediately resulted in a cry of double taxation. "Now this double taxation is a sort of scarecrow, or ghost, that has been conjured up by the bankers, money lenders, and shylocks of the nation, for the purpose of frightening nervous and innocent people." Government expenses had to be paid, and if taxes on loans were passed on to the debtor by the lender, just as as they were passed on to the purchaser by the merchant, that was no excuse for exempting loans from taxation.[41] He favored a section providing for the collection of an income tax on "incomes derived from investments in bonds, notes (whether secured by mortgage or not), and upon the gross incomes of all railroad, navigation, or banking corporations, bank and exchange agencies, and insurance companies, foreign and domestic, or other corporations (other than municipal), or association whatever, formed for profit or doing business in this state." The base on which the tax was levied would be exempt from an ad valorem tax. He pointed out that under the existing system the California Fire Insurance Company paid less than half of one per cent on its income, which was thirteen times less than the proportion paid by the axerage tax payer. Other insurance companies likewise paid amounts much too

low. The Central Pacific Railroad, which boasted of paying five hundred thousand dollars in taxes, would have paid more than a million dollars if it had surrendered as large a per cent of its income as did the average tax payer.[42]

Alexander Campbell favored leaving out of the constitution the words "equal and uniform." They might prevent the legislature from passing a graduated succession tax. "It is a just and impartial tax. If we had such a tax in this state at the present time the entire expenses of the state could have been paid from the estates of deceased persons up to the present time from this source alone. Four or five men have died during the past year whose estates, under such a tax, would have paid the entire current expenses of the state government during this period."[43] J. McM. Shafter wished to retain the words "equal and uniform" in their places. Otherwise the legislature might tax one class of property four times as much as another.[44] The committee of the whole finally adopted the provision that "Taxation shall be equal and uniform throughout the state," by a vote of fifty-nine to twenty-one. In contrast with attitudes concerning the article on corporations, it is evident here that many of the delegates realized that they did not know much about the meaning and the implications of the terms which they were using. Knotty problems of finance were too much for most of them, and the problems were made more complicated by the fact that the unknown vagaries of the judicial mind must be awaited before it could be known what the content of the terms used should be.

Section two, as presented by the committee, read as follows:

> All property, including franchises, capital stock of corporations, or joint stock associations, and solvent debts, deducting therefrom debts due to bona fide residents of the state, and excluding growing crops, private property exempt from taxation under the laws of the United States, public property belonging to the United States, or to this state, or to any municipality thereof, and all property used exclusively for charitable purposes, shall be taxed in proportion to its value, to be ascertained as directed by law.

Here the discussion of the basis of taxation began in earnest, and it was in connection with this section that the great multitude of propositions for solving the tax problems of the state were offered. Carl C. Plehn, in his discussion on the taxing of mortgages in California, divided these propositions into four groups:

> 1. Tax the lender for the amount due him, and deduct that amount from the value of the property in the possession of the debtor.
>
> 2. Tax mortgages, bonds, notes, bank accounts and all other evidences of debt, and allow no deduction for indebtedness.
>
> 3. Tax the income from loans and exempt the loans.
>
> 4. Exempt the mortgage, but allow the mortgagor to deduct from the interest, or from the principal on settlement, that proportion of the total taxes paid which the mortgage bears to the whole value.[45]

More time was spent discussing section two than was spent on all the other sections put together. The debate began December 27th and closed January 4th. The speeches, taken all together, are not so much indicative of knowledge of the principles of taxation—though some showed

evidence of careful research and keen thought—as of the desires and immediate interests of the people of the state and of the delegates in the convention. An amendment to the section was offered by J. E. Hale which came to be known as the Boggs proposition.[46] It would come under the fourth heading of the Plehn classification. W. F. Huestis offered a substitute[47] that would classify under the first heading. It was on this proposed substitute that the debate began. Huestis insisted that solvent credits were property, and should be taxed as such. He pointed out that when land had been taxed at its full value, and the mortgage also, the creditor had raised the cry of double taxation, and had insisted that the mortgage should be exempted to remove this evil. "To confirm this (the creditor's contention) the supreme court has been invoked, and its decision, in conformity with the constitution of the state, has been against the taxing of land and mortgages in this double sense, adroitly ignoring the main issue, which is, 'should solvent debts, including those secured by mortgage, be taxed?' The fallacy becomes instantly apparent when the issues are separated. The question not being as presented for the consideration of the court, namely, 'The taxation of land and mortgages,' but 'Should money secured by mortgage not bear its proportion as wealth or property in relation to the taxes?' "[48] The purpose of his plan was to see that creditors bore their share of the tax burden of the state, while at the same time avoiding the evil of double taxation. He remarked that the subject of the taxation of mortgages had been made the subject of a recent diatribe by the Sacramento *Record-Union*. That paper, which was frequently characterized as the organ of Leland Stanford, or of the Central Pacific Railroad, was now beginning to range itself in hostility to any and all actions of the convention when any deviation was made from the constitution then in force.

I. S. Belcher, a former judge of the state supreme court and president pro tem of the constitutional convention, expressed himself as being in favor of the taxation of mortgages to the holders, but he was opposed to the provision of the amendment which would tax both the stock and the property of corporations. That would be double taxation, to which he was opposed. If the provision was aimed at a certain class of mining corporations with no property, he had no objection to that, but he did not think that double taxation was right. V. A. Gregg, a lawyer from Bakersfield, favored the taxing of property wherever it was found. The matter of who was to pay the tax could be settled privately. It was not the concern of the state. He was opposed to taxing the capital stock of corporations rather than the property which they owned because while the property of corporations was to be found throughout the state, most of the capital stock was owned in San Francisco. If only the stock were assessed San Francisco would get all the revenue. A tax on the franchises of mining corporations would be unfair because of the fluctuating value of the property. He was opposed to the provision exempting growing crops from taxation. They should not be taxed separately from the land, but, since they added to the value of the land, they should be taxed as improvements on the land.[49]

George Steele, a rancher with legal training, said of the proposal to tax mortgages that "it was the question that induced the calling of this convention. The grangers throughout the state were in favor of the taxation of mortgages, and after the decision of the supreme court

that mortgages could not be taxed, the people of the state felt outraged; they felt that there was a property interest in mortgages, and that they ought to be taxed." He admitted that if mortgages were taxed a usury law would be necessary, but he was in favor of that. "What we want is to have all the property of this state pay taxes. There is now probably not over two thirds of the property of this state listed to pay taxes. I presume that there are over two hundred millions in this state that does not pay a cent of taxes and has not for the last ten or fifteen years."[50]

J. McM. Shafter, a railroad man as well as a farmer, opposed the taxing of both corporation stock and corporation property. It was double taxation, he said. He favored the taxation of mortgages, though the debtor would not escape the burden of the entire tax unless a usury law was passed, and any attempt to prevent the lender from recouping the tax which he might have to pay would simply drive money out of the country. "The material trouble we have had is our utter inability to secure equality in assessment. There has been no authority having the power of equalization. The Spaniards who were in the first constitutional convention, jealous of the Americans, insisted upon confiding the power of assessment to county assessors without any control or supervision. The result has been a most perfect inequality. The whole intent expressed in the initiatory clause of our constitution, that all property shall be taxed in proportion to its value, by the action of the assessor is entirely defeated." The creation of a board of equalization would bring some relief. Lands in some counties that were assessed at from twenty-five cents to one dollar per acre were sold for from three to ten dollars per acre. In his own case, on the contrary, he payed from sixteen to twenty per cent on his gross revenue, and that was equivalent to confiscation. It created in him the strongest motive to sell out.[51]

J. A. Filcher, a farmer and editor of the Placer *Herald,* remarked that farming and the industrial interests which ought to be protected were heavily burdened, while water companies, insurance companies, banking corporations and railroad and steamship companies escaped taxation to a large degree. By adding to the assessment roll that which in the past had escaped, the rate would be reduced, resulting in great benefits to the people. He hoped that some way could be found to reach all the property of foreign corporations operating in the state, such as insurance companies, which were now assessed only on a few hundreds of dollars in property, while they were doing business that ran into millions.[52]

Patrick Reddy, of Inyo county, spoke often in the interest of the miners. He insisted that under the sections being discussed they were taxed three times — on the property at the mines, on the capital stock, and on the franchise. This blow at the mining industry was entirely unnecessary. He did not know if the controversy between the farmers and the miners over the use of streams had anything to do with this persecution of the miners or not. Anyway, the farmers could not afford to destroy the mines. The wild cat mining, at which it was claimed that the article was aimed, was essential to the general enterprise. If it was desired to have the constitution adopted it would be necessary to remove the discriminatory clauses, for the miners were "not simple-minded enough to indorse a measure that will cut their own throats."[53]

W. F. White, a farmer, arose to assure

Mr. Reddy that he knew of no antagonism between the farmers and the miners. The prosperity of the state rested upon the interests of both. He was sure no measure would be adopted that would injure the miners.[54] J. M. Rhodes, a rancher and miller, declared that taxing both the property and the capital stock of corporations was like taxing a building and also its shadow.[55] J. S. Reynolds, workingman lawyer from San Francisco, favored the taxing of capital stock only, in the case of domestic corporations. In case of foreign corporations, where the stock could not be reached, the property would have to be taxed.[56]

T. B. McFarland, a Sacramento lawyer who had vigorously opposed the regulation of corporations, said, "it has been stated that this convention was called for the express purpose of reaching this question of revenue and taxation. I have heard more reasons for the calling of this convention than college students give for the downfall of Rome." He thought that the majority vote had been given for the convention due to the fact that one party had paid little attention to it, while the other had printed "For a Convention" on its ballot. Men had voted the ballot without paying any attention to this provision.[57] He was opposed to taxing growing crops. He was also opposed to taxing debts, because a system could not be made uniform or approximately uniform. He thought it was better to exempt an entire class of property than to assess a class with great inequality, since the class would take its value to some extent from the fact of its being taxed or exempted. Mortgages could be taxed, for they had to be recorded, but it would be unjust to tax debts secured by mortgage and not tax those not so secured, and it would be practically impossible to discover the latter. It was not that money lenders were more apt to perjure themselves than owners of other property, but that other property was not so easily concealed.[58]

W. W. Moreland said the convention was called "because the supreme court of this state has decided that bonds and notes and mortgages are not property, and therefore not subject to taxation under our present constitution. This is the great, the moving reason, the people of this state had in mind when they ordered this convention." He suggested that it would be well to stop talking and define what property was. He would not impugn the motives of the supreme court, but the judges had been very inconsistent in their decisions on this matter, to say the least. He contended that their first decision was the right one, and that mortgages were "property," and so were subject to taxation. When after a vote the Huestis amendment was rejected, Moreland offered the following amendment:

> All property in this state shall be taxed in proportion to its value, to be ascertained as provided by law. For the purposes of taxation, bonds, notes, mortgages, evidences of indebtedness, solvent debts, franchises, and everything of value capable of transfer or ownership, shall be considered property. Growing crops, property belonging to the United States, to this state or any political subdivision thereof, shall be exempt from taxation.[59]

The Moreland amendment attempting a definition of property was presented December 28th, after the voluminous random talk here summarized. It was debated until January 4th. S. M. Wilson, who had been a leader of the opposition

to the regulation of corporations, opposed the amendment, and expressed the opinion that "the constitution should only prescribe that all real estate and all tangible property shall be taxed, and that such taxation shall be according to value, and that the legislature should have, beyond that, the power and discretion of imposing any other tax it might see fit, except a capitation tax. Then the legislature, in its discretion, could enact a stamp tax, a tax upon incomes, or a tax upon anything else, according to the necessities of the state at the time."[60]

M. M. Estee opposed the Moreland amendment on the ground that it was vague, and would be subject to a variety of interpretations. But, he said, "It has been stated on this floor that a caucus was held by a portion of this convention upon the adoption or rejection of the proposed amendment, and that in that caucus it was agreed that this amendment should be adopted, and therefore I am led to believe that there is very little use in discussing the question in open convention if that be true. Because if a grave question of constitutional law can be settled outside of the convention by the action of a portion of the convention, then discussion here on this floor seems to be utterly useless and unnecessary.[61]

The *Record-Union* commented a few days later on the report of a contemporary that twenty-six grangers had held a caucus and agreed to tax debts, foreclosures and mortgages, and exempt growing crops.[62] The farmers and the workingmen were coming more and more to stand together, as against the representatives of the great moneyed interests. They insisted on a broad definition of property and on the taxation of credits, and, though the Moreland amendment failed to pass, a section with similar provisions was finally adopted.[63]

Section three provided that land and improvements thereon should be separately assessed. Cultivated and uncultivated land of the same quality and similarly situated was to be assessed at the same value. The purpose of the section was to raise the assessments on great tracts of uncultivated land which were held by a few men as investments, and which were customarily assessed at much lower figures than cultivated lands of the smaller holdings. The section was accepted after a brief debate.[64] Section four provided that tracts of land containing more than one government section should be assessed by sections and fractional sections, and that surveys should be made of tracts not already sectionized. This was to make possible the more accurate assessment of lands of unequal value included in the same large tract. The committee of the whole accepted a modified form of the section as presented.[65]

Section five was closely related to section two, in the matter of the taxation of mortgages. It provided that:

> A mortgage, deed or trust, contract, or other obligation by which a debt is secured, shall, for the purposes of assessment and taxation, be deemed and treated as an interest in the property affected thereby. Except as to railroads and other quasi-public corporations, in case of debts so secured, the value of the property affected by such mortgage, deed of trust, contract, or obligation, less the value of such security, shall be assessed, and taxed to the owner of the property, and the value of such security shall be assessed and taxed to the owner thereof, in the county in which the property affected there-

> by is situate. The taxes so levied shall be a lien upon the property and security, respectively, and may be paid by either party to such security; if paid by the owner of the security, the tax so levied upon the property affected thereby shall become a part of the debt so secured; if the owner of the property shall pay the tax so levied upon such security, it shall constitute a payment thereon, and to the extent of such payment, a full discharge thereof.[66]

After some debate that was indicative chiefly of the bewilderment of the delegates concerning the meaning of certain phrases in the section it was adopted, with the addition of the following amendment:

> Provided further, that if any such indebtedness shall be paid by any such debtor or debtors after assessments and before the tax levy, the amount of such levy may likewise be retained by such debtor or debtors, and shall be computed according to the tax levy of the preceding year.[67]

Some delegates were curious to know the reason for including the clause "except as to railroad and other quasi-public corporations." The effect of this clause would be to deny to such corporations the right to deduct the amount of their debts from the taxable value of their property, a right which was given to individuals. It seems to have aroused little discussion, however, after the following explanation by Henry Edgerton: "It was made to appear to the committee on revenue and taxation that the railroad companies were in debt in very large sums, in the form of bonds, and that those bonds were held in Europe, New York, and other places outside of this state. . . . Under a decision of the Supreme Court of the United States . . . it has been held that these bonds are not within the jurisdiction of the state, and cannot be taxed. So, unless this exception is made the railroad companies will have a good thing of it."[68] Hence it was, apparently, that a provision was included in the constitution of the state which appeared to lay a heavier burden on certain corporations than on other corporations and individuals. By claiming this discrimination against them to be a violation of their rights under the federal constitution the railroads of California were later able to involve the state in endless litigation, and to set their own figure for the taxes which they would pay.[69] There have been many rumors that when the friends of the railroads in the constitutional convention discovered that they would be unable to shape the new constitution to their own ends they connived to include in it provisions that would make it impossible to enforce objectionable portions because of unconstitutionality. Whether or not they were really so subtle as all that will probably remain unproved, but in the light of later events the accusation seems plausible.

It may not be amiss here to note that on the subject of double taxation the delegates were concerned only with taxation in California. They were not interested in the fact that corporations which paid taxes on all their property might have bonds outstanding which were taxed to the holders in New York or elsewhere. That is to say, it was not the principle of taxation with which they were concerned, but the concrete way in which their own economic interests were affected.

Section six was a further attempt to prevent creditors from shifting to debtors the taxes assessed on the money loaned by the creditors. It read:

> Every contract hereafter made, by

> which a debtor is obligated to pay any tax or assessment on money loaned, or on any mortgage, deed of trust, or other lien, shall, as to any interest specified therein, and as to such tax or assessment, be null and void.

It was adopted with but little debate, the principal discussions having taken place at the time when section two was before the committee.[70]

Section seven provided that, with certain exceptions, corporations formed under the laws of the state should, before filing articles of incorporation, pay into the state treasury one hundred dollars for the first fifty thousand dollars or less of capital stock, and a further sum of twenty dollars for each additional ten thousand dollars. Any later increase of capital stock was to be made only with the payment of like fees. Henry Edgerton said that the section had a double purpose. It was first for revenue and second for the purpose of crushing out wildcat mining corporations, of which he mentioned the Garrison mine as an illustration. "Stock was issued to a large amount, and a great many people bought the stock. It was not long before in the local columns of a certain journal it appeared that this mine gave most flattering prospects of success; it would undoubtedly in a short time go into a bonanza. It was not long after that when there was published a very horrible and terrible accident that occurred in the mine. There had been a premature explosion of a blast, and several miners killed or injured. Numerous notices appeared in this newspaper to attract public attention to the mine, and a good deal of stock was sold. Finally it occurred to somebody that they would go and visit the mine. They could not find it. The whole thing was a fiction from beginning to end. I am told, and I believe, that this is the history of a great many of these corporations."[71]

Patrick Reddy and others attacked the section. Wildcat mining was necessary, they said, for the development of the industry in the state. The people should bear the responsibility for bad investments which they made. If this burden were placed on capital it could not be brought in from the East, and most California capital was now invested in Nevada mines. Furthermore, corporations could be formed in other states under more favorable laws, and the stock placed on sale in San Francisco.

The workingmen were divided on the question, some being in favor of striking it out, and others, like J. S. Reynolds of San Francisco, being in favor of it because it would "tend to discourage one of the most nefarious practices that was ever indulged in by a civilized community in the name of business."[72] Probably some of the hostility toward mining projects was fairly accurately explained by C. R. Kleine, another San Francisco workingman, who said, "these gentlemen who are members of this convention are crying against these mines; why? I tell you why. They have been victims. They have dealt in the mining stocks, and they have lost their money, and they are cursing the mines. They bought mining stock with the purpose of getting the best of these men and these men got the best of them, and now they are cursing them."[73]

The farmers stood largely against the section. The vote, in the end, was to strike it out.[74] Section eight, concerning the levying of taxes, was also stricken out with but little debate.[75]

Section nine provided for the collection of an annual poll tax, of not less than two dollars, to be paid into the school fund. Marion Biggs, a farmer from

Butte county, favored the tax because it would reach the Chinese in the state. He did not know whether any Chinese children attended the public schools or not, but he wanted to tax them anyway. Some delegates wanted the matter left to the discretion of the legislature. The workingmen opposed the section and wished to prohibit the tax, not because of any desire to protect the Chinese, but because they thought the tax would fall most heavily upon laborers. Clitus Barbour remarked that men who insisted that taxation should be based on property alone would be inconsistent in supporting the section, since he could prove by the *Record-Union* that two thirds of the heads in the convention had no value.[76] The section was finally stricken out.[77]

Section ten, providing that the power of taxation should not be surrendered or suspended, was adopted without debate.[78] Section eleven, directing the legislature to provide for installment payment of taxes on real property, was accepted because it would alleviate the condition in which large sums of money were taken out of circulation at one time.[79] Section twelve, providing for an annual sworn statement from each taxpayer to the county assessor, was accepted without debate.[80] Section thirteen, providing for the election of assessors and collectors, was stricken out.[81] Section fourteen, limiting the state tax on property, with the exception of taxes for the payment of the state debt, to forty cents on each one hundred dollars, was stricken out.[82]

Section fifteen provided for the establishment of the much needed state board of equalization. It was to consist of two members from each congressional district in the state, making a total of eight members in all. They were to be popularly elected every four years. The county boards of supervisors were to continue as county boards of equalization. There was no apparent effort to defeat the establishment of the state board, and it may be that there was no desire to do so. There was lengthy debate over the number of men to be on the board, some insisting that three were enough, and others holding that it was necessary to have representatives from all sections of the state so that a knowledge of all interests might be had. Whether or not the state board was to have the power of changing individual assessments was also a matter of disagreement, and no provision was added clearly giving this power. The section was accepted after the adoption of certain amendments, one of which gave to the state and county boards of equalization the power to raise or lower the entire assessment roll for the purpose of equalizing assessments.[83]

Section sixteen had to do with the assessment of railroad property. It provided that the state board of equalization should assess the value of all such property in the state. The value of tangible and non-movable property such as lands and shops was to be apportioned to the counties and other political sub-divisions of the state in which they were located. The value of all other property was to be apportioned according to the number of miles of completed road within the counties and smaller sub-divisions. Some delegates held that to give the sole power to taxing the railroads to a single body would eliminate the inequalities of many local assessments, that the apportionment advocated was just, and that it would be generally satisfactory. The section was vigorously supported by Henry Edgerton, chairman of the committee on revenue and taxation, who had been a bitter opponent of efforts to regulate railroads.

Many delegates were suspicious of the plan. They saw no reason why the local property of the roads might not be taxed with the same facility with which other property was taxed. It was an unnecessary centralization of power that might be effectively exercised by the smaller governmental units. If there resulted inequality of assessment as among the counties, the assessment might be equalized by the state board of equalization, as in the case of other property. Edgerton replied that there was a franchise to be taxed, over and above the stock and the tangible property of the roads. Its value was to be discovered by adding together the value of the stock and the debts of the companies, and deducting therefrom the value of the tangible property. If this was to be done the state board, which would have to tax the franchise, since it could not be done fractionally by the local assessors, should have the power to determine all the assessments involved.[84]

M. M. Estee insisted that the board could use the reports of the local assessors, and that section fifteen was all that was necessary. He was in favor of striking out the section under consideration. With two authorities making assessments there would be conflict of jurisdiction. This might lead to the loss of the entire tax on the railroad property of the state. It was "providing one rule for the taxation of railroads, and another for the taxation of other property. Whenever you do that you are laying the foundation for trouble, and opening a loophole through which these corporations will escape taxation."[85] Edgerton continued to insist that unless the board did it there was no way to tax the franchise. Henry Larkin expressed suspicion as to the motives of the gentleman from Sacramento in proposing "to discover values that no one else has discovered."[86] Many men, however, expressed themselves as in favor of assessment by a central board, rather than by local assessors. Finally the amendment presented by J. J. Ayers was adopted. It read as follows:

> The franchise, roadway, roadbed, and rolling stock of all railroads in this state, operated in more than one county, shall be assessed by the state board of equalization at their actual value, and the same shall be apportioned to the counties, cities, towns, or districts in which such railroads are located, in proportion to the number of miles of railway laid in such counties, and all other property of railroads shall be assessed by the counties in which such property is situate.[87]

Thus the assessment of railroad property was divided, part to be by local officials, and part by the state board of equalization. As in the case of some of the preceding sections no one knew how the arrangement would work in practice, and the motives of the delegates who favored or opposed it were probably much mixed. Since the interpretation was to rest with the courts no amount of wisdom could determine what the section would later be construed to mean.

Section seventeen provided that the real and personal property of corporations other than railroads should be assessed in the counties where found, and that the capital stock, less the amount of the other property, should be assessed at the principal place of business of the corporations. The stock was to be assessed at its market value. J. W. Winans expressed his interest in the section by saying that he was opposed to double taxation, but "this involves a question and a principle of an entirely different nature. The proposition

here is that the capital stock of corporations shall be taxed at its market value. It is merely the difference between the value of the tangible, visible property and the market value of the capital stock as stock. In San Francisco, for instance, the Spring Valley Water Company is taxed, I think, on eight million dollars of real and personal property. When the city wishes to buy the property, it sets up a market value of some fifteen million dollars, that being the price which the aggregate stock would bring at market rates. There is a difference between the property taxed and the property quoted of seven million dollars, which is ample illustration of the objects of this section."[88]

The mining group, represented by Patrick Reddy and others, opposed the section, calling it double taxation. It was remarked that these men had been especially zealous in their efforts to lay taxes on railroads, but that when corporations were reached in which they had an interest, their zeal was measurably diminished. J. A. Filcher expressed it by saying that "a great deal depends on whose ox is gored."[89] T. B. McFarland, an opponent to the regulation of railroads, arose to offer his condolence and sympathy to the gentlemen from the counties interested in mines. He was very sorry that they were unable to direct the storm that they had helped to raise. If they and their constituents went down before it he would be very sorry for them.[90] The jealousy of other sections of the state toward San Francisco cropped out when W. J. Tinnin expressed opposition to the section because most of the money would go to San Francisco, where most of the corporations had their principal places of business.[91] The section was finally stricken out, by a vote of sixty-two to forty-seven.[92]

J. M. Dudley offered an additional section which provided that

> Income taxes may be assessed to and collected from persons, corporations, joint stock associations, and companies, resident or doing business in this state, or any one or more of them, in such case or amounts and in such manner as shall be prescribed by law.

Volney E. Howard offered an amendment making the tax on persons to apply only to money loaned. It was already necessary to question people as to money loaned, so the section with that amendment could not be considered as providing for an inquisitorial tax — the latter being considered a strong objection to the levying of an income tax. The proposition was attacked on the ground that it would help to drive capital from the state, but it was adopted,[93] without the Howard amendment. Another effort was made to secure a provision for a poll tax, and one was made to declare a poll tax unconstitutional. No action was taken on either.

This concluded the consideration of the article on revenue and taxation by the committee of the whole. That the results were not everywhere popular is to be seen from the following comment of the *Record-Union:*

> The department of revenue and taxation, as it has left the hands of the committee of the whole, will require the services of something like ten thousand assessors and collectors. It provided for a multitude of inquisitions into the most private affairs of every citizen. Instead of making the fiscal system of the state simpler, clearer and more equitable, it introduces to it a crowd of confusing and

> perplexing agencies; it makes the distribution of the burdens of taxation more unequal than ever; it provides for double, treble, and quadruple taxation; it sows the seed for such a crop of complaints and abuses as have never yet been so much as imagined. We do not believe that one delegate out of the majority that has adopted this outrageous system has any intelligent idea of what it involves.[94]

The article as reported by the committee of the whole was taken up by the convention February 5th and discussed until February 11th. Objection was made to article one, which provided that taxation should be equal and uniform, since the words "equal and uniform" were hard to define and had been the basis of the decision in which it was declared that credits secured by mortgage were not subject to taxation. The section was finally dropped from the article.[95] Section two was again debated at length. It was finally adopted, with the addition of a provision that "The legislature may provide, except in case of credits secured by mortgage or trust deed, for a deduction from credits or debts due to bona fide residents of this state."[96] The purpose was to prevent the same property from being taxed twice — in California. If it were taxed once in California and one or more times in other states that was another matter. In section fifteen the number of members of the state board of equalization was reduced from two for each congressional district to one. Otherwise, with but minor changes, the report of the committee of the whole was concurred in. J. J. Ayers offered a section providing for a succession tax, but it was rejected.[97] James O'Sullivan offered another blow at large land holdings by proposing a section providing for a graduated land tax, but this section also was rejected.[98] It was voted that the article be engrossed and read a second time.[99]

The second reading was given February 26th and 27th. One important change was made by the adoption of a section providing for a poll tax of not less than two dollars, to be paid into the state school fund.[100] The vote was seventy-four to fifty-three, the workingmen being heavily though not solidly against the section. The article was adopted as a part of the constitution by a vote of eighty-one to forty-seven.[101] The alignment of particular groups in the vote is not clear, except that the farmers stood for the article, while the men who had opposed the regulation of corporations, such as Henry Edgerton, T. B. McFarland, and S. M. Wilson, voted in the negative. The workingmen vote was split, apparently without any definite line of cleavage. The convention was nearly over and the close harmony of workingmen activity which had characterized the earlier weeks was no longer in evidence. The farmers, apparently, were satisfied with the article. The other groups, it is equally apparent, were not.

Other taxation provisions were adopted under article four, on the legislative department, and article eleven, on counties, cities and towns. The legislature was forbidden to pass special legislation for the assessment and collection of taxes, extending the time of collecting, refunding money paid into the state treasury, or exempting property from taxation.[102] No county, city, town, or other public or municipal corporation, or inhabitants thereof, or property therein, were to be released from their proportionate share of state taxes.[103] The legislature was forbidden to levy local taxes for local purposes, but might vest power in corporate

authorities to levy and collect taxes.[104] The purpose of these sections was to remove the evil of extensive special legislation by the state legislature, which had prevailed under the constitution of 1849, where such restrictions were not made.

Perhaps generalization should not be carried too far in recounting the efforts of the constitutional convention to adjust the burden of taxation, but the story should at least be summarized. The constitution then in force said little on the subject, leaving the solution of problems to the legislature. The legislature proved inconsistent in its attitude toward certain critical problems over a period of years, and the courts, as the interpreters of the constitution and laws of the state, showed a like inconsistency. These shifts in position varied the immediate tax load to be borne by particular individuals and groups, and provided stimulus for their desire to settle the law on the subject in such a way as to result in their permanent benefit. The taxing of credits secured by mortgage was one of the most highly controversial problems. The courts of the state held for many years that these credits were taxable as property, and changed this position only after the banking interests of San Francisco had made powerful attacks upon it in controversies brought before the supreme court. Although it was repeatedly shown that taxes levied on credits secured by mortgage were eventually saddled upon the borrowers, debtors insisted that there was a property interest in the money that was loaned, and that it should be assessed to the creditors for a share of state and local taxes. To prevent its becoming double taxation upon debtors they sought an additional constitutional provision that would prevent the shifting of taxes from mortgagees to mortgagors.

A large part of the mortgagor group was made up of farmers. Their representatives went to the constitutional convention determined to tax mortgages and every other kind of intangible wealth that they could possibly reach. They succeeded in getting the broad definition of property which they wanted, and in getting one provision that provided for the taxation of mortgages to the holders and another that forbade or invalidated contracts by which mortgagors agreed to pay the taxes assessed on mortgages. They failed to secure the enactment of a usury law, however, so there was nothing to prevent lenders from raising the interest rate to cover the amount of the tax. Nevertheless the debates indicate that many of them thought that they had perfected an arrangement for throwing a part of the burden of taxation on the possessors of capital. The farmers gave vigorous support to the article, and apparently for that reason.

In the effort to get at the large land holdings it was provided that cultivated and uncultivated land of the same productive capacity and similarly situated should be taxed at the same value, and that large tracts should be assessed by sections rather than as a whole. This was the extent of what the convention was able to achieve in restricting the loss of taxes due to land monopoly. A state board of equalization was established to take the place of a predecessor that had been declared unconstitutional by the state supreme court.

The arrangement for the assessment of railroad property was different from that of assessing other corporation property and the property of individuals. Railroads were not given the right of deducting their mortgage debts from the assessable value of their property, as were other

property holders. These provisions, supported by the friends of the railroads and accepted by their critics with suspicion, were to provide trouble for the state and protection for the railroads in years to come.

Throughout the discussion of all the diverse provisions of taxation it was strikingly evident that the delegates were not seeking to discover or to apply any fundamental principles of public finance. They were concerned primarily with shifting from themselves and their constituents as much as possible of the burden of taxation. The motive, throughout, was economic self interest, combined with sympathy for others in similar positions as themselves who would be benefited by the same provisions that benefited themselves. By some this fact will be adjudged a condemnation of their statesmanship. Others will see it only as the normal working of human beings in such situations, not necessarily either to be praised or condemned, but merely to be taken into account in any attempt to understand the political process.

Two other facts were similarly evident. One was the desire of many delegates to establish unchangeable legislation in the constitution, free from the trammels of legislative amendment and judicial interpretation. The other was the manifest ignorance of almost all members of the convention concerning the probable interpretation and effect of any number of the provisions of the article. Most of these men had interpretations to offer, but the interpretations were notoriously conflicting. In reality it was evident that the courts had plenty of work left for them, after all. Because of the varied meanings that could be read into the article, and because the subject touched so intimately the lives of all the people, it was to be the rallying point of both proponents and opponents of the new constitution when it came before the people for their verdict.

CHAPTER VI

THE CHINESE

WE should miss many of the most interesting political phenomena of the constitutional convention if we failed to trace further the results of the spirit embodied in the battle cry of the workingmen, "The Chinese must go." Dennis Kearney was not a man with a broad intellectual background, but he knew the power of a slogan. With his ringing challenge he drew together the discontented masses in San Francisco and elsewhere, and led them to cast ballots for men who were pledged to drive the "heathen Chinee" from their midst. Throughout the state, where the workingmen's ticket did not prevail, the race problem was regarded as acute, and as being one which the constitutional convention must solve. As soon as the election returns were in a change was noticeable in the attitudes of the workingmen. Formerly, when they were free from responsibility, they had made boisterous and boastful promises as to what they would do if elected to the convention. Now, having elected a good, substantial minority of the delegates, they felt the sobering effects of some responsibility for political achievement. The ensuing summer was devoted not to promises, but to study and secret planning.[1] When faced calmly the problem of what to do about the Chinese was bewilderingly difficult, more so, indeed, than that of regulating corporations. The article on corporations came up for discussion first, and into this discussion much of the energy of all the reformist delegates was poured. When the Chinese problem came before them much of their zeal and most of their assurance had passed away.

At the beginning of the convention a standing committee was appointed to draft an article on the Chinese which would be made a part of the constitution.[2] Farmers, corporation lawyers, and workingmen were all well represented on the committee. John F. Miller of San Francisco, law trained and now president of the Alaska Commercial Company,[3] was made chairman. There was strenuous disagreement in the commitee as to what should be done, the outcome of which was told by the chairman in his introductory speech on the subject on December 9th.[4] All members were agreed that something ought to be done about the problem, but there agreement seemed to end. The Supreme Court of the United States had already spoken in such a way as to indicate that interference by California with the immigration of Chinese would not be tolerated,[5] and the able lawyers on the committee accepted that fact as settled. It was their contention that the ultimate solution of the problem lay not in the assumption of powers that belonged exclusively to the federal government, but in persuading that government itself to limit Chinese immigration. Such, indeed, was the contention of Justice Stephen J. Field, the California judge who sat on the bench of the Supreme Court of the United States.[6] He was a close friend of S. M. Wilson, Joseph P. Hoge, and others of the cor-

poration lawyers in the convention. He made himself even more unpopular than they were by his decisions protecting Chinese against discriminatory legislation in California.[7] All of these men saw themselves facing certain barriers to action, which had been erected directly by law or by judicial interpretation. Therefore they held that little could be done in California until the path had been cleared by the federal government.

The conservative members of the committee therefore supported only the first section of the committee report, which read as follows:

> The legislature shall have and shall exercise the power to enact all needful laws, and prescribe necessary regulations for the protection of the state, and the counties, cities, and towns thereof, from the burdens and evils arising from the presence of aliens, who are or may become vagrants, paupers, mendicants, criminals, or invalids afflicted with contagious or infectious disease, and aliens otherwise dangerous or detrimental to the well-being of the state, and to impose conditions upon which such persons may reside in the state, and to provide the means and mode of their removal from the state upon failure or refusal to comply with such conditions; *provided,* that nothing contained in the foregoing shall be construed to impair or limit the power of the legislature to pass such other police powers or regulations as it may deem necessary.[8]

All members of the committee could support the section as far as it went, but, admittedly, it did not go very far. It directed the legislature to provide for the exercise of the police power under certain circumstances, but it could have done that without the section. The legislature was not told how to avoid the pitfalls of unconstitutionality—it was merely told to keep on trying, with the good wishes of the constitutional convention back of it. Miller thought that the banishment of Chinese criminals in large numbers would discourage immigration, and that if some of them were sent to the eastern states it might stir the nation to the extent of modifying the treaty with China and limiting immigration. "If the people over on the eastern side will not hear our complaints; if they say this is not an evil, and that the Chinese are as good as any other class of immigrants—that we are making a great noise and confusion about nothing—let us send over four, or five, or ten thousand of these people—those who are dangerous to the well-being of the state—belonging to the criminal and diseased classes; let us send them a brigade or two of these Chinamen, and see how they like it. There would be no surer way of changing their views upon the Chinese question."[9]

Some members of the committee insisted that the state had the right to prohibit the immigration of the Chinese, and a section was offered directing the legislature to so provide. Another section proposed that corporations employing aliens not eligible to become citizens should forfeit their charters. Other sections provided that they should not be employed on public works, that they should not have the right to sue or be sued in the courts, that they could not catch fish, own property, or make contracts of conveyance or lease in the state. No person employing Chinese was to be allowed to vote. Miller declared himself opposed to such treatment of the Chinese. "This plan is directed to the employment of Chinese, to the denial of their right to the protection

of the law. I do not propose to discuss it, but I characterize it as a plan of starvation by constitutional provision. If the Chinese are not to be employed by anybody, are not permitted to labor, they cannot live. Because by labor all must live, and if you deprive them of the right to labor, they must starve. That is the logical sequence of the position assumed by the advocates of this prohibition against the labor of these people. It is indefensible, for it deprives the prohibited people of the right of life. I hold that the right to labor is as high and sacred a right as the right to live. That you cannot deprive these people of this right under the treaty with China. That it is against the spirit of the age, against all laws of civilized communities."[10] Nevertheless, he brought his speech to a close with a ringing peroration which told of the perils of the oncoming hoards of Chinamen, from which the people of the Pacific coast must be saved by action in Washington.

The debate was on. J. J. Ayers addressed the committee of the whole with great fervor and earnestness. He declared that he was the author of the section which provided for direct exclusion, and that he was ready to defend his belief in its constitutionality. He argued at length, quoting publicists and court decisions. There was much to be said for his arguments, in point of logic, perhaps as much as might be said for those of his opponents who later took the floor. His weakness, however, lay in the fact that his citations were at times from minority opinions, rather than from decisions of the courts.[11] He closed his speech with a dramatic picture:

"It has been our boast, Mr. Chairman, that California is unsurpassed in the grandeur and beauty of her scenery, in the fruitfulness of her soil, in the salubrity of her climate, and in the natural resources which she possesses to sustain a vast and prosperous population. Here, if anywhere on this broad earth, has nature invited the hand of industry to achieve that best of all rewards, a home in which neither poverty nor riches shall come to mar the even happiness of its possessor. Here, if blind avarice for inordinate wealth do not give over our fair fields and rich valleys to a servile race, we shall build up a state whose prosperity will be founded upon the even distribution of its soil among a contented and a homogeneous people. If we preserve this fair land and its industries to our race, the future of California, measured by the progress she has made in the past, will be splendid beyond the conception of the most sanguine. Young as I am, comparatively, I have seen this state as a wilderness, and almost without a solitary American home. I have seen the turbid waters of the Sacramento when they were as clear and pellucid as those of our mountain lakes.[12] I have crossed the site of this fair city when its houses were tents and its streets an open plain. I have seen our great commercial metropolis when canvas frames marked the places where now rise stately piles of granite, brick, and marble. Having been with the state at its American birth, grown with it from its auspicious infancy to its majestic majority, I love it with an affection as ardent and profound as the love which springs from maternal joys, or that which is inspired by the sublime sentiment of filial devotion. During all these years I have seen the insidious approaches of a blight which has gradually spread, until now it threatens to envelop and crush the industries of the whole state. By voice and pen I gave

the note of warning when the danger seemed remote. By voice and pen I labored to awaken our people to a sense of peril as it grew in proportions. By voice and pen I have continued to appeal to the patriotism of our people to throw off this insidious monster, which is folding itself around the heart of our state, to shake it off, 'as shakes the sturdy forest oak its poison vine apart.' The time has at last come when the people are aroused to the magnitude of the danger; and the time and the opportunity are now here when we can deal with it effectively. It is for you, gentlemen, to say whether this fair state shall be reserved as the splendid heritage of your own race—as the home of the men who are flesh of your flesh and blood of your blood; or whether it shall be given over to the unarmed but irresistible conquest of a people who are as strange to our manners and our civilization — to our progressive possibilities and our lofty aspirations—as though they had suddenly dropped upon us from another planet. On the one hand, you can make it a splendid American commonwealth, with a destiny bright and glorious beyond parallel; on the other, you can make it the mercenary Mecca of the scum of Asia—a loathsome Chinese province. You can dot our plains and valleys and mountain sides with the happy homes of our people; or you can desecrate them by turning them over to the occupation of a servile and a despised race.

"May it not, Mr. Chairman, be the tristful task of some future Childe Harold, when wandering among the ruins of our young state, to point out the remnants of our fallen temples and crumbled hearths, and truthfully exclaim that

" 'Time hath not rebuilt them; but upreared
Barbaric dwellings on their shattered site,
Which only make more mourned and more endeared
The few last rays of their far-scattered light,
And the crushed relics of their vanished might.' "[13]

It seems fair to say that the beliefs of Ayers and other speakers who followed him in the days to come that there was some constitutional means of ridding the state of the Chinese were the product of the desires of the speakers rather than of unbiased studies of constitutional law. The legal arguments of workingmen and farmers, and even of lawyers of the ability of Volney E. Howard, were interspersed with earnest protestations that the presence of the Chinese was a dread menace to white civilization in the state. The implication seemed to be that if the need were great enough there must undoubtedly be some legal means of meeting it. Said Howard, "in the classic language of some of my friends on the other side, I say, 'the Chinese must go.' But I propose to make them go in a legal way, by the regular action of the government. Violence has been suggested. Mobs have been alluded to. Now, sir, so far as anything but regular governmental action is concerned, I set my face against it. If our system of government is not sufficient to correct all the evils of society, then is that government a failure and a fraud."[14]

The belief that the government provided some legal means for redressing all grievances was of course not confined to members of the California constitutional convention, and might, perhaps, have been found to reign in the minds of all the judges of the Supreme Court of the United States. But where a means to a solution was itself productive of other evils, such as the exclusion of the Chinese in violation of a treaty with China would have been, the evils may be expected to

be weighed against each other by those who sit in judgment. Most men who lived in immediate contact with the race situation in California were apt to exaggerate its importance, as it seems evident that they did, while people in the distant East were irritated that the Californians should be stirring up international discord.

Able lawyers who were the employees of corporations such as the railroads, which had prospered through the employment of cheap Chinese labor, saw the situation as much less of an evil, and were in no great hurry to remedy it.[15] They were thoroughly hostile to all non-legal measures, were sure, on the basis of decisions of the courts that there was almost no legal action that the state, as such, could take, and recommended that action be secured by memorializing the federal government. When the debate on the subject began these men were evidently convinced that the constitutional convention would do little more than adopt the first section of the proposed article.[16] For the first few days they permitted the delegates with rabid anti-Chinese sentiments to air their views at length and without opposition. Then, perhaps because they feared that the convention was about to make itself ridiculous by adopting provisions which were obviously unconstitutional, they joined in with their powers of oratory. J. McM. Shafter declared that he was voicing his opposition at the request of the chairman of the committee on Chinese.[17]

Shafter turned all the genius of his intellect to a sarcastic attack upon the proposed article. He showed the unconstitutionality of some provisions, and the inanity of others. He pessimistically proved that nothing could be done, though he admitted that the evils were great. The legal barriers to action could not be removed. He anticipated the coming of barbarism with the onsweep of the yellow hordes and wished to see it checked, "But as important as the attainment of this result may be, I am not willing to attain it by means which violate my oath to support the Constitution of the United States, nor to disregard a treaty made under its authority."[18]

It was N. G. Wyatt, a workingman lawyer from Monterey, who pointed out that constitutionality could not always be determined in advance, and that the Supreme Court of the United States did at times make concessions to the demands of the occasion. He referred to the Granger cases,[19] which had been decided the previous year and the decision of which had come as a rude shock to conservative lawyers. "The decision of the court . . . was a surprise to the legal fraternity, and contrary to the law ideas of the bar, not only in San Francisco, but all over the state, and all over the United States. Notwithstanding that, the decisions were made in obedience to the necessities of the case, in obedience to the demand of the great body of the people of the United States. And whenever law is so exclusive that it ceases to supply the wants of the people, that it ceases to protect the people, it ceases to become good law for the people. And I say now that if we pass these provisions and bring this matter before the Supreme Court of the United States, presenting it as it can be presented, I believe they will find a way to relieve us from our burdens, as they did the farmers of Illinois."[20]

W. H. L. Barnes, admitting that he usually saw eye to eye with S. M. Wilson,[21] differed with him and with his colleagues on the Chinese problem. He

scorned the timidity that opposed putting provisions in the state constitution because they might not meet the approval of the Supreme Court of the United States. He favored, and he offered for the approval of the convention, provisions that were much more straightforward than most of those proposed by the committee. One could not tell what might happen. "Lawyers differ, and judges decide, and the Supreme Court settles it one way or the other."[22] "Now, it is possible, barely possible, that as the science of jurisprudence grows, it has taken, and will take, steps in advance as to what are understood to be popular rights. I do not suppose there is a distinguished lawyer on this floor—the gentleman from San Francisco, Mr. Wilson, the gentleman from Marin, Mr. Shafter, or the gentleman from San Francisco, General Miller, lawyer as well as general —who would undertake to say that in five years, or ten years, the higher courts may not have taken advanced doctrines as to what are considered popular rights. Such advances are necessary in order to keep pace with the changed condition of things. The bearing of circumstances may change and alter the condition of things, and the law, being a progressive science, will move along and keep pace with this change; and if we put a clause in the constitution that will permit this question to be reopened and reexamined, no man need be afraid of this being in the nature of a defiance of the Constitution of the United States. It is the only way to test it. It is the legitimate, legal, honorable method of testing it, and having our powers and rights defined."[23]

Without following the debates at length through the discussion in committee of the whole and in convention it may be said that the proponents of positive action steadily lost as the debates continued. In spite of the contentions of Barnes and a few others the delegates heeded the pleas of the conservative group that it would not do to include provisions that would probably be declared unconstitutional. When the discussion in committee of the whole was completed, on December 16th,[24] the section requiring the legislature to exclude Chinese had been dropped, as had also the provision denying to the Chinese the right to sue or be sued in the courts. California corporations were still forbidden to employ Chinese, but the prescribed penalty of forfeiture of franchise was omitted, and the problem of enforcement was left to the legislature. Later the convention eliminated the sections which denied the right of settling in the state to persons who were ineligible to become citizens, and the right to catch fish in the state or to purchase or hold real property.[25] Even in its final state of emasculation the article might have been effective in combatting Chinese immigration had it had the support of the courts, but it bore evidence of the extent to which the convention had quailed before the lash of unconstitutionality.

In addition to its work in preparing and debating the article on Chinese the convention sent a memorial to the government at Washington praying for such action as would stop Chinese immigration.[26] It sent a memorial to the governors of Oregon, Nevada, Montana, and Washington, and Idaho and Arizona territories, urging them to make similar appeals to the federal government.[27] It seems probable that in the preparation of these memorials much of the zeal was spent which might otherwise have gone into the preparation of the article.

In contrasting the fate of this article with that of the articles on corporations

and taxation it is to be noted that although there had been a great deal of shouting to the effect that "the Chinese must go," there had here been no important group with a specific plan for action, as in the case of the other articles. The report of the committee showed the disagreement of most of the members on most provisions. There was no group in the convention ready to harmonize the work of the committee, and the debates failed to clarify the situation. It became evident that while most non-legal members of the convention at one time or another voiced scorn for lawyers, they had a pronounced dread of the threat of unconstitutionality. This fact was probably used as a whip in the hands of some who desired to limit the article for other reasons. Indeed, most of the speakers were usually to mass a semblance of legal argument back of any points which they sought to make.

Perhaps it was true that there was little that the state could do concerning the problem, because of encroachment on the powers of the federal government. It is significant to note, however, that the ablest and best trained lawyers in the convention did little more than exercise obstructive tactics. They suggested appeal to the government at Washington and gave that movement nominal support, but in the main they seemed devoid of constructive ideas for dealing with the situation. Most of the article as adopted was the work of other men less able than they. Of course, it should not be forgotten that most members of the convention were impatient of the ways of these lawyers, and would not submit to their leadership under any circumstances. It would not be surprising if the lawyers in question determined to do as little as possible in the convention, but to make themselves effective elsewhere, namely, in attempts to influence the action of the federal government.

The discussion of the article seemed to provide greater temptations to oratorical display than that of any other topic considered by the convention, and the peroration quoted from the speech of J. J. Ayers was one of many such resounding appeals that echoed out into the halls of the capitol building. The blind fervor of race prejudice gave stimulus to all the eloquence of which the delegates were capable, even though it seems to have given little backing to creative thought. The delegates enjoyed to the fullest the opportunity for self expression, and were doubtless motivated further by the fact that the speeches would read well from the local newspapers of their constituents. Perhaps it was hoped that the speeches would play a part in satisfying the desires of the people for action against the Chinese, since an effective plan could not be agreed upon for the constitution. At any rate, the forceful earnestness of the oratory was much more impressive than the verbose indirectness of the article.

CHAPTER VII

LESSER PROBLEMS

THE articles on corporations, taxation, and the Chinese provide the best topics about which to arrange a study of motivation and political technique in the constitutional convention. There are points in connection with some of the other articles, however, which lead either to further conclusions or emphasize conclusions already drawn. We need not, for our present purpose, take up these other articles as wholes, because of the almost automatic way in which they were in most part framed and adopted. It was taken for granted, for example, that there should be articles on rights reserved to the people, on legislative, executive and judicial departments, and so on. It was generally taken for granted that there should be a governor and other customary executive officers, a bicameral legislature, and a hierarchical arrangement of courts. Some of the customary arrangements were questioned by weak minorities, but the major portion of the delegates looked upon them as matters which were settled, and which could not and should not be otherwise. This fact is itself significant to an understanding of the political process, but for this particular study it will be necessary merely to glean from many articles accounts of such controversies as throw light upon the influence of motives and the exercise of political technique.

Two sections of the declaration of rights came in for prominent attention. The first was section three, which when introduced provided among other things that the Constitution of the United States was recognized as "the great charter of our liberties."[1] The provision stirred the imperfectly allayed bitterness of the period of the Civil War. Volney E. Howard and others objected to it because it emphasized too much the power of the federal government. Some argued that the Declaration of Independence was the real "charter of our liberties." Some thought that the federal and state constitutions should be spoken of together as supreme in their respective spheres. T. B. McFarland urged the adoption of the provision, and produced a sensation by declaring that there were any number of men of power and influence in California who still favored the establishment of a Pacific republic. The workingmen had incorporated the provision in the platform of their state convention, and declared that they did so because they wanted to disprove the accusations being made against them by the press of the country. One workingman, C. S. Ringgold, threw caution to the winds and declared, "The Declaration of Independence is a political expression. The Constitution of the United States is a political abortion. . . . It has ever been construed in the interest of capital. . . . . The Constitution of the United States has been violated in the interest of capital in every section and article. It has outlived its usefulness. . . . If to preserve the Constitution liberty must be suppressed, then abolish the Constitution."[2]

The obnoxious section was finally stricken from the article, and another was

inserted in its place which denied the right of secession and declared the loyalty of the state to the Union.

Section nine, having to do with freedom of speech, was the center of vigorous discussion.[3] As presented by the committee it provided, as did also the constitution of 1849, that in cases of libel "the jury shall have the right to determine the law and the fact." It was presumed that freedom of speech was protected by the provision, in that judges who might be prejudiced against defendants because of personal attacks or for other reasons were deprived of the privilege of so interpreting the law that juries, passing only on the facts laid before them, must inevitably vote for conviction. When the section was offered T. B. McFarland proposed an amendment to strike out this provision, arguing that there was no reason for granting this special privilege to defendants in this particular kind of crime.[4] J. J. Ayers, editor of the Los Angeles *Express,* argued earnestly for the provision as essential to the freedom of the press. He referred ominously to the time when men who were the tools of the great corporations would be sitting on the bench. What would become of the right of a publisher before a judge who had been installed in office by the manipulators of a party, and who was sitting in judgment upon a man who had used his paper to attack them in their most vital part? If that judge owed his position to those men, and he could define the law to the jury and tell them what their verdict should be under the law, what honest journalist would come out of that trial triumphant? Would not the honest publisher who had sought to protect the people and to strike at rascality—would not he be consigned to a dungeon, whilst the rascals stepped forth as men who had been persecuted?"[5]

The debates ranged over a period of two days, some delegates arguing that no special privilege should be granted to the press and that juries needed the guidance of judges in matters of law, while others delved deeply into the law of England to show that the proposition in question was a bulwark of liberty. However great the merits of these legal discussions, we can not summarize them here. However, they provoked from McFarland a comment that is significant for us:

"It is somewhat amusing to me, sir, to see how certain gentlemen here one day cling with all their powers of eloquence to the sacred charter of liberty, in order to advance their favorite propositions, and the next day they are for making a change, and sticking to the relics of the barbarous ages. One day, like a balky mule, with clenched teeth, standing with their faces to the past, peering into the darkness, and trying to stop the revolutions of the world; and the next day we find them tugging at the wheels of the great triumphal car of human progress. One day the most conservative, and the next the most overflowing radicals. Whenever anything new is mentioned the gentlemen do not like, 'I stand by the old constitution.' Whenever a new proposition is presented which meets their views, then they are opposed to clinging to a relic of barbarism. Now, sir, it is not an argument in favor of a proposition that our fathers indorsed it, because we have rejected nine tenths of their arguments. Neither is it an argument in favor of a proposition because it is new. Why, gentlemen talk one breath about sticking to the old constitution, and the next breath about amending it. What right have gentlemen to tell us

what the people want? How do they know what the people want? I am not aware that the people have ever voted on this proposition, so as to give us any intimation of what they want, and it is amusing to hear gentlemen on this floor proclaiming what the people demand of the members of this convention. Gentlemen seem to think that all they have to do is to get up here and talk about capital, capital, capital."[6]

After lengthy arguments a substitute for the provision was adopted, by a vote of seventy-four to sixty-seven.[7] The substitute provided that "the jury shall have the right to find a general verdict, as in other criminal cases." On the following day an attempt was made to change the result of the vote, but to no effect. However, when the matter came up for the action of the convention more than two months later, when many of the conservative leaders in the convention were absent, an amendment proposed by J. J. Ayers which restored the old provision was adopted.[8]

It is difficult to say just what, if anything, is proved by the fact that in the debates in committee of the whole most of the conservative leaders opposed the provision, though the liberals doubtless thought the purpose was to retain the maximum of power for corporation judges. The quotations already given, however, indicate something of individual motives and something of the technique of appeal before the convention. If T. B. McFarland was successful in exposing this technique from the viewpoint of an eye witness, W. H. L. Barnes was no less successful in portraying from the same point of view the attitude of the convention toward itself and its task:

"I was under the impression, during my brief residence in California—now amounting to fourteen or fifteen years—that this was a prosperous and happy people. I had formed the vague and chimerical notion that, notwithstanding we needed reform in some certain directions —notwithstanding occasions had arisen which were not contemplated when this organic law was first adopted by the people—yet, that upon the whole, and upon the average, the people of this state were as happy and as well contented, as prosperous, as full of growth and progress, as any people upon whom God's sun ever shown. I have learned (because I suppose it is true, since it is asserted here) that the ship of state is rotten from truck to kelson; that the three great departments of the state are full of corruption; that you cannot trust the executive department; that you should have no confidence in the judicial department; and that the legislative department has sunk beyond plummet reach.

"I am glad to know that the virtue and intelligence, and the wisdom, of California has been rescued and put into this convention; and I doubt, sir, that if at this moment the Angel Gabriel, should blow his horn to summon the just and the unjust to the judgment of the last day—should he here and now appear, that the men who make your governors, and have made them; the men who have made your judges, and are your judges; the men who have been your legislators, and are your legislators; that the the citizens of California who make your grand juries and compose your petit juries, will sink to the hell prepared for the evil-doers, and that the members of this convention will rise to slow music, to be placed upon the clouds, with white robes upon them and harps in their hands, to sing forever hallelujahs to — themselves." (Applause and laughter).[9]

In the prepartion of the second article of the constitution the subject of woman suffrage came up for lengthy consideration, and most of the arguments on both sides of the question that were to be used in the decades to come were brought into use.[10] On both sides much was said of the moral superiority of women. Some argued that women would raise the level of political life, while others proclaimed that women must be sheltered from the contaminating influences of life, lest they be degraded. Some thought women had a right to political expression, while others declared that they were amply taken care of by their husbands and fathers. One chivalrous gentleman opposed granting the right to vote because suffrage should be based on the capacity to fight, which women did not have. A disillusioned workingman from San Francisco replied heatedly that if he thought women could not fight, the gentleman just didn't know women. Although there were apparently many delegates who favored conferring the privilege it was evident that most speakers were hostile to the innovation, perhaps without quite knowing why, but thought it wise to talk a great deal for the benefit of their constituencies. In this respect the debates resembled those on the Chinese. In the end the proposed amendment was voted down.[11]

If the delegates had come to the convention determined to cinch capital, tax mortgages, and expel the Chinese, they were also determined to put the legislature in its place. Session after session charges of incompetence and corruption had been made against the legislature, not always without reason. The convention set out to chastise the legislature by limiting its sphere of action, through depriving it of most of its powers of special legislation. Hitherto special acts had been passed on all sorts of subjects, and it was usually in connection with such acts that corruption was charged. Hence it was that when the article on the legislative department was adopted by the convention[12] section twenty-five contained thirty-two prescriptions of instances in which special legislation should not be passed, and then, lest that be not sufficient, a thirty-third provision prohibiting special legislation "In all other cases where a general law can be made applicable."

Indeed, some members of the convention thought that by the elimination of special legislation they were making it unnecessary for the legislature to meet more often than once in each four years, and they proposed this arrangement as a praiseworthy economy.[13] Section two of the proposed article provided that sessions should be biennial, and should be limited to sixty days, except the session immediately following the convention, which might be eighty days. In the course of the debates changes were made so that members of the legislature were to draw pay for only sixty days for each session except the first for which one hundred days were allowed.[14] The speeches indicated that most delegates regarded the legislature as a necessary evil, and an expensive one at that. Perhaps it should be remarked that no consideration was given to the problem of ways and means of choosing a better legislature. The only action taken was to attempt to hedge about more carefully the kind of legislature usually elected, to prevent it from doing too much damage.

The article on the judiciary provided considerable difficulties for the committee on that subject, particularly as it dealt with the supreme court. That court, then composed of a chief justice and four asso-

ciates, was heavily over-worked and was unable to keep up with the flow of cases that were coming to the docket. Many of the opinions of the court were not given in writing, hence it was often hard to tell what was the basis of action taken. All this was a source of considerable irritation and worry to the lawyers who appeared before the court. The lawyers of the judiciary committee, of which S. M. Wilson was chairman, felt that they had to do something about the situation. They heard, and finally adopted, a plan that was offered by John W. Dwinelle, a prominent San Francisco lawyer, who appeared before the committee as the representative of the San Francisco Bar Association. That association had met and voted in favor of a scheme proposed in a bill introduced into the house of representatives by Alexander H. Stevens.[15] The arrangement provided that the supreme court was to be composed of a chief justice and six associates. For important cases all of the justices were to sit together, but on most cases they were to sit in two departments, so that two cases might be heard at the same time. Thus the state would have virtually two supreme courts, by which the heavy load of work would be cleared away. All decisions were to be supported by written opinions.[16]

Important and far reaching as the effects of this arrangement would be, it was little debated on the floor of the convention. J. S. Reynolds opposed it because it was untried and unheard of. He had found "nothing like it between the lids of any book.[17] Most of the delegates, however, were either not interested in the subject, or were diffident about expressing an opinion concerning it. It was on another part of the arrangement for the supreme court that they became voluble.

Until a few years prior to the date of the convention the supreme court had met at Sacramento, the capital of the state. Then the lawyers of San Francisco wanted a term of the court. In the words of Henry Edgerton, of Sacramento, "It was then agreed to have a term of court in San Francisco, and San Francisco promised to bear the entire expense of the removal and maintenance of the court. The agreement was that the state was to be exonerated from any expense on account of the change. What was the result? Last winter the delegation from Los Angeles came here and wanted a term of the court held there, and they notified the San Francisco delegation, and it was agreed if they would carry the bill through they would saddle upon the state the expense incurred in removing the supreme court to San Francisco. Of course, San Francisco having one third of the members of the legislature, together with the southern delegation, easily carried the bill. By that one removal alone this state was put to an expense of thirty thousand dollars in hard twenty-dollar pieces, which the City and County of San Francisco had solemnly promised to honor, as far as it could do it, to pay all this expense, and save the state from ever paying out a dollar. So that as a question of economy a court on wheels is not a success."[18]

The proposed section contained a provision, presumably included for the sake of economy and efficiency, to the effect that "All sessions of the court, whether in bank or in departments, shall be held at the capital of the state." Volney E. Howard, of Los Angeles, immediately moved to amend by adding "in Los Angeles and such other places as the legislature may provide."[19] A lengthy debate was immediately projected. It was argued that there were not proper facilities for

the court anywhere except in the capital. It was replied that Los Angeles would provide the facilities. It was said by some that attorneys from the southern part of the state could not easily come more than five hundred miles to plead cases. Others argued that most lawyers had work that required their coming to the capital at one time or another anyway, and that they could travel more easily than could the court. Apparently most of the San Francisco bar association group were willing to give up a local session of the court in order to have it always near at hand, at Sacramento.

The climates of respective sections of the state came up for a combination of witty and acrimonious discussion. It was said that Los Angeles was very hot, and men soon got lazy. The chief justice would soon be walking arm in arm with General Howard, under huge Panama hats, seeking the shade. It was retorted that Sacramento was as hot as the place down below we read of, and was in danger of being drowned out any day. Citizens of Los Angeles admitted the possession of good wine, while parched-throated San Francisco workingmen raged about the villainous whiskey they were able to get in Sacramento. Finally a vote was taken, and the Howard amendment was lost.[20] Byron Waters, of San Bernardino, then proposed an amendment striking out the sentence locating the court at the capital, and the motion carried by a vote of sixty-four to forty-five.[21] In the discussion before the convention Henry Edgerton moved that the sentence be again inserted, and it was debated at length, but the motion was lost.[22]

Many delegates, particularly of the workingmen, were displeased with the provision which set the length of terms of justices of the supreme court at twelve years. They wanted the terms shorter, some as short as four years, in order that the people might maintain their control over the judiciary. They were unable to effect a change, however, and it seems to have been due to this fact, together with the fact that the article was supported by the hated corporation lawyers, that many of the workingmen opposed the article when it was adopted, by a vote of seventy-four to forty-five.[23]

The treatment of the article on education might be discussed at length,[24] but its nature will here be only briefly indicated. Most of the delegates had come to the convention imbued with the desire to secure certain specific reforms in government which would result in economy to the people of the state, or to the groups to which they belonged. Advanced theories of education were not a part of their equipment. Retrenchment was their cue, when they came to discussion of the cultural needs of the state. Although the maintenance of the University of California was guaranteed little interest was shown in the maintenance of educational facilities beyond the common schools. The plan for a state board of education was rejected. The duties of selecting text books and examining teachers, which the board was to have, were passed back to the counties — a backward step, it seems to have been, in the light of the need for better supervision in these matters. However, with the emphasis placed on other things, it is not surprising that such was the attitude of the convention.

In order to cover all the work of the constitutional convention the articles already mentioned would have to be treated much more fully, and many others would have to be analyzed. Lest the voluminousness of such an exhaustive treatment offer more of confusion than of illumination

it seems best to leave the meticulously thorough analyses of these and other topics to investigators whose special interest is in the topics themselves rather than in the light which the activities of the convention may throw on the nature of political processes. This chapter and its predecessors give to the reader some conception of the variegated types of thought and impulse that characterized the convention, and of the manner in which they sought expression. The giving of such a conception has been their purpose.

CHAPTER VIII

THE CONSTITUTION BEFORE THE PEOPLE

THE appropriation for the expenses of the constitutional convention was for a period of only one hundred days. A great deal of time during the first half of the period was taken up in fruitless argument. When it was realized that the work was not likely to be completed within the allotted time efforts were made to shorten speeches and speed up the work, but at the end of the one hundred days much remained to be done. It was necessary either to continue the work without assurance that compensation would ever be voted, or to postpone further sessions until after the next meeting of the legislature in the hope that further appropriations would be voted. On the ninety-seventh day C. O. Finney, a Republican and workingman from Ventura county, announced that two days later he would offer a resolution that the convention adjourn, to reassemble on the first Monday in September, 1880, a year and eight months later, if in the meantime the legislature had not made a new appropriation for expenses. The resolution declared, in part, that

> "This constitutional convention was ordered by a small majority of the people of this state, showing that they were unprepared for any radical change in the organic law; and whereas this convention was called by a hostile legislature, which so framed the calling act as to render impossible the completion of its work in any such thoughtful and finished manner as to make it acceptable to the people, or a credit to the state; and whereas, the time fixed by the legislature for the session of this convention has now expired, and the state authorities seem to construe against it every technicality of the law; and whereas, it is now evident that only a doubtful quorum can be kept together, which will not fully represent the various interests of the state; and whereas it seems desirable to us to resubmit the whole matter to the people of the state, that they may take such action therein as may to them appear best. . . ."[1]

The president of the convention was to appoint a committee of five who were to prepare an address explaining the situation to the people, and requesting that if they desired to see the work completed they should elect a legislature which would make the necessary appropriations. Most of the delegates were unwilling to throw all the blame on the legislature and walk out at this late date, and the resolution was voted down, with only five persons supporting it.[2]

The matter provided a talking point for persons and newspapers already hostile to the convention. The *Record-Union* declared that the press all over the state was in favor of the Finney resolution, but that "Of course public opinion will not move the convention. . . . If public opinion had been respected by this assemblage it would possibly have made a very different kind of constitution."[3] J. J. Ayers said that it was generally felt that

the state officers might do all they could to hinder further work, possibly by such methods as cutting off heat from the building and forcing the convention to complete its work elsewhere.[4]

Nothing of this kind appears to have been done. The convention continued its deliberations, the delegates receiving their pay in script. The San Francisco *Chronicle* announced that the script was selling at sixty-five to seventy cents on the dollar, and that suspicions were being raised by the corporations that the constitution would fail, and the script would not be redeemed.[5] A few days later the *Chronicle* said: "A portion of the press is already seeking to create the impression that the work of the delegates will be rejected; that public confidence has already been withdrawn from the convention. There is in fact no good ground for such a belief."[6] On January 20th the *Record-Union* reported that citizens of Knight's Ferry had petitioned G. W. Schell and T. D. Heiskell that the constitutional convention adjourn *sine die*. That paper remarked that the people of the state generally should let the delegates know that adjournment was desired.[7]

The work of the convention was completed March 3rd, and the constitution was adopted by a vote of one hundred twenty to fifteen. It was then signed by one hundred thirty-seven members.[8] G. A. Johnson presented and moved the adoption of an address to the people of the state, prepared by members of the convention, setting forth the salient differences between the old constitution and the new, and pointing out the improvements in the new constitution. After discussing the principal articles it ended with the following paragraphs:

> In conclusion, we submit the result of our labor to you for your approval or rejection. Considering the climate, situation, and extent of our state, and the many, varied, and almost irreconcilable interests of our people, our task has not been an easy one. We have endeavored to remain faithful to our trust — to uphold the rights of the people at all times, feeling that of them we were a part, to them we were responsible, and that they must finally pass upon the conclusions reached by us.
>
> It remains with you to determine whether you shall continue under the old regime or approve the organic law we herewith submit to you.[9]

The address was adopted by a vote of one hundred and three to thirty. The constitution was placed in the hands of the secretary of state. Copies were to be made and sent to every voter. It was hoped that the document itself would enable the friends of the constitution to make a direct appeal to the people, in spite of the widespread hostility of the press,[10] although there was some question as to how well the masses of the people would understand a document which the delegates themselves apparently did not understand too well. It contained twenty-two articles of two hundred and thirty-three sections, as contrasted with the thirteen articles of one hundred and fifty-six sections of the old constitution, and was elaborate in the discussion of detail. However, in spite of its amplitude, its provisions were subject to many conflicting interpretations.

On March 12th the *Chronicle* published a list of forty-two daily and weekly newspapers of which fifteen were for the new constitution, ten were opposed to it,[11] and seventeen were waiting for something to turn up. On the 24th it published a list of ninety-eight newspapers of which

forty-four were for the new constitution, fifty-three were against it, and one was undecided. Most of the prominent city papers were against it, however, and in the final alignment the *Chronicle* was the only San Francisco paper of importance that supported the new constitution. It was a loyal champion. It had a wide circulation throughout the state, and through the persistence of its editors in attacking the arguments of opponents and showing the good points of the new constitution it made itself probably the most effective organ in the state in support of the work of the constitutional convention.

All the newspapers of importance in Oakland, Sacramento, and Stockton were hostile to the new constitution, so that its support in the northern part of the state was left to the *Chronicle* and to about half of the papers in the smaller towns. In Southern California support was greater than opposition. Three of the four newspapers in Los Angeles were for the new constitution, as were two in San Diego and two in San Bernardino.[12] The *Chronicle* clasified the source of opposition as follows:[13]

1. Corporation, railroads, etc.
2. Banks, which had been virtually exempt from taxation.
3. Dealers in mining stocks now to be taxed.
4. Land monopolists.
5. Pro-Chinese aristocrats.
6. Newspapers who sell out to the above classes.
7. Preachers who serve the above.

A wide range of provisions in the new constitution was used by parties on either side in constructing arguments for or against its adoption. No doubt particular arguments on particular provisions often represented the real convictions of the speakers or writers, but it was to be noted that men who were for the constitution were inclined to view all of its provisions in a favorable manner, while those who opposed it could find no good in it that was not to be found also in the old constitution. It is of interest to note that the *Record-Union* came to be deeply concerned over the welfare of the people, and grew fearful lest the railroad commission should be controlled by the roads.[14] Shrewd observers were not greatly moved by the fears it expressed that

> It [the new constitution] will operate to the injury of the poor in preventing the formation of new corporations, and will then give more power to the great corporations now existing. The aggregation of capital is the poor man's defense against the tyranny of individual wealth. The new constitution deprives him of this protection, and leaves the masses at the mercy of the rich few.[15]

So general was the belief that the *Record-Union* was a railroad organ that a pretense of supporting the new constitution might have been more effective in opposition than open attack. Similar suspicions were attached to the San Francisco *Alta,* perhaps the most ably edited newspaper in the state, which made heavy logical forays against the document turned out by the constitutional convention, and many other papers of lesser ability were likewise suspected. It is not easy to tell to what extent they were justly accused, but the fact that these things were believed had a limiting influence upon the power of the papers.

On the subject of the railroad commission the *Chronicle* maintained that it would be easier to find three honest men for a commission than one hundred and twenty for a legislature, and gave as evi-

dence the assertion that the state had had at least two governors whom monopoly could not corrupt, while the legislators fell before the temptation.[16] The Los Angeles *Express* insisted that no man, not even a bad man, would dare betray his trust in the conspicuous position of railroad commissioner.[17] The advocates of the control of corporations made the most of their contention that a way had been found to check the oppression to which the people of the state were subjected, and that therefore the constitution should be ratified. Not only were they using the argument to further the cause of the constitution in general, they apparently believed in the efficacy of the document for protecting the people against organized powers of superior strength.

The article on revenue and taxation touched all the people at highly sensitive points. Its provisions were subject to varied and conflicting interpretations, hence it easily became the battle ground of argument while the constitution was being considered by the people. The *Record-Union* had many things to say. First of all, it deplored the fact that the provision had been omitted requiring that taxation should be equal and uniform. To be sure the constitution declared that taxation should be in proportion to value, but that might mean that there would be double taxation on one kind of property and treble taxation on another.[18] In the second place, the scheme for taxing intangible property, particularly that of corporations, was regarded as iniquitous:

> When the constitution says that all material, tangible property, and all "credits," "bonds," and "stocks" shall be taxed, it will not be competent for the courts to say they shall not be, on the plea that to tax them would impose double taxation. Under the proposed constitution the credit and the property of the debtor which gives solvency to the credit, and the capital stock of a corporation, and the property of the corporation, which alone gives value to the stock, are separate properties and to tax both is not to impose double taxation, but is commanded by the constitution itself. Hence it is idle to talk about invoking the courts to prevent such taxation, if the proposed constitution should be adopted.[19]

As for the arrangement for taxing mortgages and deducting their value from the taxable value of the property against which they were held, the *Record-Union* pointed out that it was being assumed that mortgagees would not raise the interest rate sufficiently to recoup themselves for the amount of the tax which they paid.[20] As for taxing the savings banks as was planned, that would be nothing short of a calamity.

> On the first of January last the savings banks owed their depositors $57,846,025.40. On the same day they had in their vaults, in money, only $2,375,414.47. Think of the banks being called on to pay nearly $58,000,000, and having less than $2,500,000 to do it with. What would happen? Not a week would elapse before every savings bank in the state would be compelled to suspend payment and close its doors.[21]

Notes would be called in if the constitution was adopted, and financial havoc would prevail. Money would be withdrawn from the banks and invested in United States bonds, which could not be taxed. Again, taxation upon savings banks would reduce the earnings of all deposits below four per cent. The deposits would be withdrawn from the

banks, and industry would be deprived of the funds.[22] Great indeed were the calamities which the *Record-Union* foresaw.

The *Chronicle* appealed with equal zeal for the adoption of the new constitution, arguing that through the new scheme of taxation the interests of the people would be protected.

> In 1877 the real estate outside of San Francisco was assessed at $203,803,446. Of this $41,000,000 was on town lots; the remaining $162,803,446, on lands. And of this it is next to a certainty that the four and a half million acres belonging to actual cultivators — small farmers, the producers of the wealth of the state and its bone and sinew either in peace or war — paid at least $125,00,000. The rest, $37,803,446, was paid by the owners of the 20,000,000 acres — the monopolists who produce nothing, who hold the land on speculation, who lease a part of it to cultivators at three times as much per year as it is valued for taxes, who build no roads, no towns, no churches, support no schools, make no improvements, hire no laborers but coolies, and when the state or nation has any fighting to be done they run away to foreign countries.[23]

The *Chronicle* predicted that under the new constitution the assessed value of the land of the state would be raised from $162,000,000 to $350,000,000. The taxation of railroads by a state board of equalization was a good thing. In some counties the Central Pacific Railroad had been taxed at $6000 per mile and in others at $20,000, but in none at the full value. This would now be changed. It was well to leave growing crops untaxed, as the new constitution provided, and thus encourage the cultivation of the soil.[24] As for the assertion that capital would leave the state if credits were taxed, interest rates in California were ranging from seven to fifteen per cent. Taxes had in the past averaged about two per cent, and in the future more property would be assessed so that the tax rate would be reduced at least as low as one per cent. As a sample of money rates in the East, money was now abundant in New York at four per cent. Hence, it seemed hardly probable that capital would leave California.[25] Money would not be taxed both to depositors and to banks, as was declared by some. The legislature might tax it to either, but it would not tax both. Double taxation would not be levied.[26] Alexander Campbell was quoted as saying that for twenty-seven years credits were taxed in California, and the state was prosperous during all that time.

> There was then no cry of communism or agrarianism. The bankers and merchants, he said, are opposing the constitution not because of taxation chiefly, but because it puts a check upon the corporations and wild speculations.[27]

The Los Angeles *Express* remarked that the monopolists were very solicitous about the poor tax payer, but that since he already paid for the support of the government the new constitution could not hurt him if it did no good.[28] Thus the debate ran, paticipated in by all the newspapers in the state and covering all of the articles of the constitution, but as a rule with major emphasis upon the subjects of corporations and taxation. The San Francisco *Argonaut,* a political and literary weekly and a bitter opponent of the new constitution declared that document to be:

> An organic law that appeals to all the prejudices and passions of the hour; that promises certain needed reforms; that embodies many things that the people have demanded, and that have been denied them by both republican and democratic parties; an organic law that robs the water company by a most iniquitous provision regulating its charges; a law that places the railroads and other corporations at the mercy of those whose interest it will be to steal from them; that makes it almost impossible for banks and corporations to exist, and that threatens the rights of private property.[29]

The new constitution was the work of the San Francisco *Chronicle* and Dennis Kearney, the article said. Undoubtedly the *Argonaut* was not alone in holding this opinion. Henry George characterized the constitution as "a sort of mixture of constitution, code, stump speech, and mandamus."[30]

The ward presidents of the workingmen in San Francisco held a meeting and decided unanimously to support the new constitution and to use the influence of the clubs in its favor.[31] The Sacramento workingmen were divided. On March 12th the *Record-Union* announced that an anti-constitution meeting of workingmen had been broken up by Kearneyites.[32] On April 8th it announced the formation of an anti-constitution club in the third ward. At the meeting it was declared that the new constitution was:

> An instrument concerning which lawyers, judges, journalists, workingmen, farmers and business men so disagree as to its meaning that we can see nothing, in case of its adoption, but many years of litigation and wrangle during which industry will languish, and the workingmen of the state will be driven out and be supplemented by the cheap, vile Chinese labor element which already curses us.[33]

The new constitution was by no means all that Kearney had wanted to see it, and for some time there was doubt as to what position he would take. On March 3rd, however, he set out for a speaking tour in the southern part of the state to urge its adoption. He took himself and his task most seriously. He wrote in 1890:

> Against me were all the newspapers and speakers, including Mr. Henry George. An immense corruption fund was raised to defeat it, so that our opponents had flooded the state with speakers; only a few were on our side.[34]

His experiences were not altogether happy, either for him or the cause which he had espoused. In Santa Ana, after having expressed himself with his customary freedom, he was assaulted by a man who had taken offense at his speech. The Los Angeles *Express* declared that according to a dispatch the man had been hired by the superintendent of the Southern Pacific Railroad to follow Kearney and denounce him and the new constitution,[35] and the citizens of Santa Ana met and passed resolutions deploring the assault.[36] The matter was not serious enough to make a martyr of him, however, and his opponents were able to laugh openly and derisively about it. They used his reported utterances to attack the new constitution, as for instance:

> Kearney has been telling the people of the southern counties that the new constitution is a good thing because it will drive capital out of the state.[37]

It was further asserted that the success of the new constitution would mean the

control of the state by Kearneyism. The Los Angeles *Herald* claimed that in part its opposition to the new constitution was based on the fact that its adoption was advocated by Kearney.[38]

Shortly after Kearney left for the South a rift appeared in the workingmen group in San Francisco. The central club of the party turned against the new constitution and published an address giving nineteen reasons for doing so, summarizing them by the statement that it effected none of the objects for which the party was organized.[39] Not all of the workingmen were in sympathy with the action of the club, but still, Kearney was now virtually a man without a party. Thus far, when he had been the leader of a powerful group, the *Chronicle* had stood loyally by him, in spite of the uncouthness of his methods. Now that he was no longer a party leader and his efforts to bring success to the new constitution seemed to be redounding to the benefit of its enemies, the *Chronicle* began to change its position toward Kearney and the workingmen. An article on March 27th gave evidence of the change:

> The opponents of the new constitution are inculcating the idea that the adoption of that instrument will necessarily imply the triumph of the workingmen in September. Nothing could be more fallacious. It was framed by a convention in which the workingmen were largely in the minority. Kearney hesitated seriously before he decided to support it, and grave disturbances have occurred in his party concerning it. Its adoption or rejection is an issue distinct from all pending political contests, and regardless of party ties our citizens of every shade of opinion are advocating or opposing it.

From this time on the breach widened between the *Chronicle* and Kearney.

Constitutional clubs were formed in many parts of the state.[40] The newspapers of the period give many announcements of meetings held either in support of or in opposition to the constitution. For example, on May 5th anti-constitution meetings were to be held at Sacramento, Downieville, Placerville, Ukiah, North San Juan, Healdsburg, Petulama, Sonoma, Vallejo, Suisun, San Jose, San Mateo, Stockton, Modesto, Santa Cruz, Red Bluff, Tehama, Marysville, Woodland, and Winters.[41] Though it was claimed that all the money available for advertising was in the hands of opponents those in favor of the new constitution seem to have followed the meetings of the opposition and carried on their side of the debate.[42] Howard, Terry, Campbell, Estee, Rolfe, Tully, and others of the ex-delegates, spoke for the constitution. Others, including Casserly, Shafter, and Waters, opposed it.[43]

It was true that a great deal of money was being spent to defeat the new constitution. Its exact sources and amount might be subject to argument, but there was too much evidence to permit doubt of its existence. The following appeared in the Los Angeles *Express* of March 25th:

> The corporations have established a literary bureau in San Francisco, and are flooding the country with roorbacks about the new constitution. We learn that the rural press is to be furnished with ready-made articles by the Bohemians who have been hired to run this bureau and we may shortly look for a flood of this meretricious literature polluting the arena of discussion with its misrepresentation and sophistries.

Two days later the same paper declared that

> In spite of the two million dollars which the corporations will spend to defeat the new constitution — in spite of their power over the timid and dependent — the free people of this state will back their judgment, their manhood and their love of state by their votes.

On April 3rd reference was made to three million dollars which the corporations had put up to defeat the new constitution. The first pamphlet from the bureau had just been received. It was entitled, "The Proposed Constitution Reviewed in an Address to the Reformers of California." It was addressed to "Fellow-Workingmen," and contained forty-eight octavo pages. More details were published April 7th. It was stated that the monopolists were flooding the state with circulars, pamphlets, and other documents prepared for the purpose of securing the defeat of the new constitution. Circulars were being sent to every voter in the state. The strategy is illuminating:

> The business of the voter is first ascertained, and then a circular denouncing some section in which they think he is particularly interested is placed in an envelope, franked with a three-cent stamp and sent to him. The circular discloses the headquarters of this monopoly bureau. It is located in room 11, second floor of Wells, Fargo & Company's building, San Francisco. Here is where the great work of bulldozing the state is done. There is an unlimited supply of money at the command of the "Executive Committee" and we may look for the flood of sophistry and misrepresentation to continue until the 7th of next month.

Henry George said of the bureau that

> The moneyed classes of San Francisco, taking alarm at the taxation clauses, raised a fund of some hundreds of thousands of dollars, to defeat the new constitution, which was placed in the hands of the head lobbyists of the railroad company, and a regular bureau opened, while threats of the discharge of employees and withdrawal of patronage as penalty for voting for it were freely made. If, as believed by many, large special interests were engaged in the support of the new constitution, they had the intelligence to work quietly. On the surface it seemed as if every tyrannous and corrupt influence was united for its defeat. In the torrent of passion which raged it is difficult to say whether those who opposed or those who advocated the new constitution said the most absurd things. . . . The real agrarians and communists, if the terms he applied to men who desire fundamental changes, opposed the new constitution all they could. But the fact that enormous sums were being spent to defeat it, subjected everyone who opposed it to the implication of being the hireling of anti-popular interests.[44]

John P. Young, who was formerly connected with the San Francisco *Chronicle*, declared in his history of San Francisco that there was a fund of $700,000 at the command of the bureau. The bureau boasted that the newspapers of the state were twenty to one against the new constitution. Attempts were made to intimidate the proprietors of the *Chronicle* and check the vigorous fight which that

paper was making for the constitution, but they failed in their purpose.[45] Many banks and building and loan associations strenuously opposed the new constitution. On April 26th the San Francisco *Alta* published in its advertising columns a letter signed by the directors of the Hibernia Savings and Loan Society and another signed by the directors of the San Francisco Savings Union, the German Savings and Loan Society, the Security Savings Bank, and the Humboldt Savings and Loan Society, all urging depositors to vote against the new constitution. Ten building and loan associations in San Francisco and Oakland sent out circulars attacking the constitution.[46] The provision in the article on corporations which made directors responsible for embezzlements and misappropriations of officers was made the point of the attack. The *Chronicle* remarked that although the directors might be serving without pay, as they said they were, they were usually wealthy men who had funds tied up in their organizations. They would not resign under the new constitution, even though they had threatened to do so.[47]

In propaganda against the new constitution the Sacramento Savings Bank sent out the following circular to its customers:

> Dear Sir: I herewith beg leave to inform you that your note of.....
> .....is due on the.....day of.....
> and if the new constitution shall be adopted, the increase in taxation therein provided will compel the board to materially increase the rate of interest on your loan, or call it in.[48]

In discussing the circular the *Chronicle* declared that the tax rate would not be raised, but would be reduced, owing to the fact that more property would be assessed. Anyway the bank was too hasty in sending notices to its customers, for the taxes for the fiscal year beginning July 1, 1879, would have to be levied under the old laws, since new laws could not be enacted until the next session of the legislature.[49]

All the savings banks of Sacramento took much the same attitude as the Sacramento Savings Bank.[50] It is not difficult to agree with the Los Angeles *Express* that the attitude was taken for the purpose of intimidation, since the new taxing system could not go into effect until March, 1880.[51] At a meeting of the directors of four building and loan associations of Sacramento, held March 26th, a report was prepared opposing the new constitution, and over two thousand copies were printed to be sent out to patrons. The report declared that under the new constitution double taxation would result from the definition of property. The associations would be adversely affected because under the existing constitution neither stock in corporations nor mortgages were taxed, while under the new constitution both would be taxed. Furthermore, the directors and officers of the associations, except the secretaries, received no compensation. If they had to take the responsibility for embezzlements and misappropriations they would resign, and the associations would cease operation.[52] The *Express* thought it well not to be disturbed by this type of threats. It suggested that in spite of the forebodings of capitalists capital did not seem to be preparing to leave the state, since on April 3rd the San Francisco Loan and Discount Association filed articles of incorporation with a banking capital of $200,000.[53]

Many merchants took positions against

the new constitution. It was reported that:

> The merchants of San Francisco are withholding credits and accommodations from the interior merchants until it is ascertained whether these credits are to be the subject of taxation.[54]

Later it was announced that the wholesale merchants of San Francisco had formed a "San Francisco Merchants Protective Association," which was sending out literature of the railroad bureau and of its own, and that the merchants individually did "furtively intimate in the corner of their business bills that their correspondents need look for no more accommodation if they support the new constitution."[55] The *Express* denounced these methods of intimidation. It gave other instances of high-handed methods of securing the defeat of the constitution. For instance, the Central Pacific Railroad Company sent word to superintendents and foremen at Sacrameto to tell the employees how to vote. The Pacific Rolling Mills required the foremen to fill out cards showing how the men were going to vote. The Cutting, Pickling, and Packing Company of San Francisco gave the following order to its employees:

> We desire and expect you will not only vote yourself against the new constitution, but spare no effort which you can properly make to induce others to aid in its defeat at the polls.[56]

Such are examples of the varied types of interests in the state which thought themselves likely to be adversely affected by the new constitution, and set out to secure its defeat. Undoubtedly a large part of the population was admittedly vague as the nature of the issues of the struggle, and prepared to cast votes for or against the constitution without being quite clear as to why they did so. In other cases political prospects of one kind or another were determining influences. The case of Grove L. Johnson, of the central Republican committee at Sacramento, was one of a mixture of motives. The proposed constitution provided for the vacating of state offices and the election of new officers at an early date. Johnson denounced it in the first place because Kearney had made it his by espousing it, and second, because it legislated twenty faithful senators out of office, eight of whom were true blue Republicans, and third, because all the good in the new constitution was in the old one also.[57]

The election was held on May 7th, when the new constitution was adopted by a vote of 77,959 to 67,134[58] The total vote of the state was 145,093, out of a potential electorate of about 161,000.[59] San Francisco, the birthplace and chief stamping ground of the workingmen's party, gave a majority of about 1600 against the constitution. A few more than 38,000 people voted in San Francisco,[60] out of a potential electorate of about 47,000.[61] Other of the more populous counties that gave majorities against the new constitution were Alameda — where the vote was probably strongly influenced by Oakland — and Sacramento and Santa Clara. The larger counties giving majorities for the constitution were Los Angeles, San Joaquin, Solano, and Sonoma. The largest majority against the constitution was in Alameda county, with more than four thousand votes in excess of those for the constitution, and the largest majority for it was a majority of more than two thousand in Los Angeles county.

All of the southern counties gave ma-

jorities for the constitution. In the central and northern part of the state the cities leaned to opposition, while the rural districts were for it, except that some rural counties in the east-central part of the state, possibly influenced by mining interests which were disappointed in the work of the convention, gave majorities in the negative. In view of the fact that the constitution was framed in a convention where the workingmen were in the minority and was defeated by popular vote in those centers where their strength was supposed to be greatest, it can hardly be regarded as a communist document. It was reported, however, that communist meetings in New York and Chicago expressed great elation at the adoption of the constitution as a mark of the advancement of their cause.[62]

The *Commercial and Financial Chronicle* reviewed the new constitution two weeks later and declared:

> It is proper to say that neither the document itself nor its ratification is chargeable to communism. It is an exceedingly able and cold-blooded instrument, free from rant, and is a very determined effort to reduce the pressure of certain evils which have been very grievous in the state. Fierce as the charge upon corporations is, it is not unprovoked, for the heavy corporations of California, we must fairly admit, have been naturally unpopular. But the farmers did the work of ratification, and their grievance was the "ranch."[63]

It was true that the grievance of the farmers was the "ranch," but it was the ranch as influenced by taxation, and by railroads and other factors. For an understanding of the vote in the southern part of the state in particular the problem of railroad grievances must be kept well in mind. The article cited above was summarized as follows:

> Without extenuating the faults of this constitution we think, therefore, that its practical power for harm has been much overestimated. Its violence will render it nugatory, just as an excessive dose of poison defeats its own purpose. Viewed in this way, it seems to us really a lighter menace to capital and prosperity, practically, than if it had been limited to less sweeping provisions which might have been carried out. It is a mischievous document, but it is simply impossible of execution — as if, in terms, it sought to repeal all law and leave everything to the right of the strongest.

While attempting to show that capital need not greatly fear results which might flow from the new constitution the article revealed incidentally the horror which men of business at that time had of popular interference with their activities.

Henry George, in answer to the widespread belief that California had adopted a constitution which was imbued with ideas antagonistic to the rights of private property, declared:

> It is anything but agrarian or communistic, for it entrenches vested rights — especially in land — more thoroughly than before, and interposes barriers to future radicalism by a provision in regard to amendments which will require almost a revolution to break through.[64]

In the light of these comments and of a study of the text of the constitution itself it is easy to see that the new fundamental law of the state was not the unprecedented and dangerous document that it was said to be. It may have had poten-

tialities for serving as the basis of any type of political action which the dominant groups in the state saw fit to inaugurate, but the labels of "Kearneyism" and "communism" seem to have been applied to it not because they were warranted, but because they served as effective tools for advocating its defeat at the polls. The constitution no more merited the charges that were made against it than the exaggerated praise which it received. If for many years after the election people throughout the country had false conceptions of the constitution adopted in California the fact was due in large part to the propaganda circulated against it by the powerful interests and conservative leaders of the state. The unbiased education of the general public was neither intended nor brought about by the campaigns either for or against the new constitution.

CHAPTER IX

CONCLUSION

IT is not our purpose here, in connection with the story of the constitutional convention, to recount the constitutional history of the state from 1879 to date. However, for our conclusions concerning the part played by the work of the convention in the political life of the state we need some suggestion of subsequent events, particularly during the ensuing decade.

The convention was hardly over before the leaders of the major political parties were hurrying back to their respective camps. Though many of them fought against the adoption of the constitution with all the vigor and ingenuity which they possessed, they heeded the dictates of necessity and embodied in their political platforms of that summer earnest protestations of their intentions of carrying the new constitution into effect in all good faith.[1] Under the constitution an election of state officers was to be held in the fall of 1879. A number of liberal leaders who had advocated its adoption, motivated by the fear that the constitution might be mutilated by unsympathetic officers, and also, perhaps, desiring positions of influence for themselves, organized a "new constitution party" and put a ticket in the field to save the state from the "banded cohorts of capital."[2] The workingmen refused to join with them and likewise put a ticket in the field. Hence, four parties, each with considerable power, competed in the election.

The results of the elections were a great disappointment to the friends of reform and of the constitution. Divided among themselves and scattering to some extent to all four tickets, they found themselves defeated while conservative Republicans were chosen to most of the offices which they coveted. Workingmen and Democrats united to elect a majority of the supreme court, but the Republicans chose the executive officers and enough members of the legislature to sabotage legislation proposed for the purpose of carrying into effect provisions of the constitution which were inimical to conservative interests. So successful was the legislature of 1880 in the performance of this task that it has been called "one preeminently of indefinite postponements."[3] We may say here that the successors to this legislature for many years were similarly hostile to the aims which had led to the calling of the constitutional convention.

The problem of railroad regulation, which the constitution was designed to solve, continued to be no less critical than before. Indeed, railroad influence was looked upon as dominant in state politics down until 1911 when a successful revolt was led against it by Hiram Johnson. The railroad commission proved as clay in the hands of the great corporations. Charles J. Beerstecher, prominent workingman lawyer in the constitutional convention, was one of the three commissioners elected in September, 1879, and was one of the first to succumb to the blandishments of corporate influence. The popular election of succeeding commissioners, down to 1911 when the office was

made appointive, proved no more successful. Indeed, the railroads seemed to profit by the scheme, in that they appeared to submit to a political agency, which in fact they were themselves able to control. The problem of discriminatory charges against persons and places continued to provide food for futile and angry controversy for several decades. The provision that railroads should not pool their earnings with steamship lines running between the same points[4] resulted in part in railroads acquiring the steamship lines, and in part in futile controversies because of the commerce clause of the federal constitution.

The provisions for taxing railroads did not work out happily.[5] No sooner had a levy been made than the attorneys of the railroad corporations began working out proofs that the scheme of taxation provided for in the constitution was unconstitutional. This was true, among other reasons, they said, because railroad property was taxed in another way than the rest of the property in the state, and because they, unlike other interests in the state, were not allowed to deduct from the taxable value of their property the amount of their mortgage debts outstanding. They failed to convince the state supreme court,[6] whereupon they transferred their efforts to the United States circuit court. There they were heard before an able judge who was believed to be in sympathy with their interests,[7] and who had been bitterly hostile to the movement to "cinch" capital.[8] The decision was against the state. Thereupon the struggle was continued in the federal courts for many years. The state was unable forcibly to collect taxes, and for a time reluctantly accepted such sums as the railroads chose to pay. The railroads used every means available to gain their ends. When railroad property was advertised for sale for taxes they found judges whom they could control, and got injunctions against the sale. When the date of sale had passed the injunctions were dismissed.[9] The dismissal of an appeal to the federal Supreme Court was brought about by the sending of fake messages that the taxes involved had been paid.[10] It was not until many years later that a settlement bearing the marks of legality was arrived at, when a reassessment was ordered and was made at much lower figures than those first set by the state board of equalization.

Other hopes concerning the articles on taxation were unrealized. The Wells, Fargo Express Company and other corporations brought a suit denying the power of the state board of equalization to raise and lower individual assessments, and won their case.[11] It was not possible thereafter for the board to interfere when it appeared that local assessors had discriminated in favor of special interests. In spite of the provisions which attempted to tax credits secured by mortgage to creditors, and prevent it from being passed on to debtors, it soon became apparent that arrangements were being devised, through the raising of interest rates or otherwise, to saddle the burden on the debtor in spite of the constitution.[12] The efforts to tax intangible wealth in any and all forms were not wholly fruitless, perhaps, but they were not rewarded with any notable success.

Other desires of the framers of the constitution were likewise unrealized. The legislature, deprived of the power of special legislation, soon learned to avoid the prohibition in many types of situations by arranging a classification to meet the particular instance, and then pass a general law to achieve its end. It avoided many of the duties laid upon it by the constitution. It did not find ways and

means of excluding the Chinese, as it was directed, or pass legislation authorizing cities or counties to do so. A provision to the effect that lobbying should be a felony[13] was little more than a laughing stock. Plans for a minimum expenditure on education, as provided for in the constitution, were not generally satisfactory when times became more prosperous, and amendments to the constitution had to be made.

It may be judged from these happenings that the dire prophecies of calamity were not fulfilled. Capital did not leave the state. Instead, the conservative interests by one means or another continued to play a dominant part in California law and politics. The workingmen's party, torn by dissensions, broke up in a short time and disappeared. Dennis Kearney, indefatigable exponent of the rights of the workers, continued his agitation but for a short time. He tried to secure action on the part of the legislature of 1880 that would carry into effect the provisions of the constitution in which the workingmen were interested, but only succeeded in making himself so obnoxious that he was barred from the floor of the assembly.[14] He was removed from the field of controversy by being made a capitalist himself. Once he had property to protect his views underwent radical change. When asked shortly before his death how he reconciled his present condition with his former principles he replied lightly, "Oh, you know, somebody has to do the work. What's the use?"[15]

Agitation for reform did not cease, however, for the interests of great numbers of the people were too vitally affected for that. Minority groups constantly fought the power of railroads and other corporations in the state and slowly made headway against them, in spite of the fact that the able warriors among them were often removed by being taken into the camp of the enemy. Public opinion gradually forced concessions, and many of the scores of amendments which have been added to the constitution have seemed to be in the interest of the masses. The constitution was intended to be a piece of fundamental legislation which would of itself immediately reorganize and redirect the political life of the state. Instead, in the light of a retrospect of fifty years, it seems to have been only one skirmish in a series of battles that have raged during and since the decade of the seventies. The enthusiastic agents of reform, temporarily organized, carried their lines beyond the point where they could hold them when dissension took the place of unity, and fell back before the forces of conservatism. But if they lost the ground which they believed they had gained it remained within their vision as a goal for future striving.

The conservative groups in California, the able lawyers and business men, were never happy over the work of the constitutional convention. First of all, it was not their work. It was done and was forced upon them by mediocre representatives of the masses. They felt the injury to their pride along with the stab at their purses, for then, as now, California had its aristocrats who were proud of the state as the work of their own hands and who took offense when others sought to exercise control. James Bryce, who in his efforts to get an understanding of what had happened made the mistake of looking to these groups for unbiased information, found them unwilling to talk. They were annoyed that the radical movement had attracted so much publicity in the East, and their only desire was that the matter should be speedily forgotten.[16]

Bryce came away with the belief that the new constitution was little more than a charter of demagogy. It is not in keeping with the usual course of events that these conservative elements should take the lead in framing a constitution which was radically different from its predecessor. Some were held back by the weight of the vested interests which they had acquired, and others by the dead hand of tradition which their profession had laid upon them. If in the vigor of youth they had, perchance, been innovators in their chosen fields, maturity, eminence, and property had changed all that. Now they moved forward only after meticulous survey of all the ways in which their interests might be affected, and of the manner in which their doings might be harmonized with the great body of the law.

Indeed, it must be said that during the last half century most of the notable efforts to bring the government of California into harmony with the changing conditions and changing conceptions of the times have been directed by men whose abilities were not above mediocre, backed by masses who had grievances the causes of which they did not understand and the remedy for which they did not know, and opposed or accepted reluctantly by the men who should have had the greatest capacity for understanding the situations and for applying measures of creative statesmanship in dealing with them. The need at the time of the constitutional convention and in the years that followed was for political measures and popular education concerning them, directed by men who had the capacity to see beyond the immediate selfish interests of themselves and their groups to a series of political relationships which provided for the harmonious working of all individuals, groups, and interests in the state. Something needed to be done — something had to be done — about the regulation of corporations, about taxation, and about the race problem, and there were crying needs for the solution of other problems. Nothing was done until men who were manifestly unable to handle the situation forced the issue. Then, most of those people who should have taken places of leadership fought stubbornly to maintain the *status quo,* or to sabotage a proposed constitution which, however inadequately, sought to remedy existing abuses. They seemed never to conceive that they had any other function to perform, and they handed down to their descendants a conception of withering disgust for the constitutional convention of 1878-79.

The story of the constitutional convention, though herein but briefly told in view of the wealth of material available, is full of suggestions for the political scientist concerning the motives that play a driving part in political action, and the techniques which men in political groups use to attain their ends. It likewise has much to offer to citizens of California in view of the possibility of the holding of another convention to frame a successor to the piece of patchwork which, through the addition of innumerable amendments, the present constitution has become. It is conceivable that the new convention, like the old, would become a battleground of special interests each fighting selfishly for the achievement of the immediate ends which it desired without regard to the welfare of companion interests with which it must ultimately stand or fall. That such a melee would be tragic is not to be gainsaid. On the other hand, it is not beginning a discussion of the millennium to suggest another possibility. If a constitution is framed it ought to be done by men who have the greatest capacity for

looking ahead and planning a harmonious political organization of the state as it will be. It must be done by men who realize that the welfare of the state does not lie merely in the welfare of its banks, or its railroads, or its insurance companies, or its power companies, or its farms, or its laborers, but in a type of political, social, and economic organization where all of them can work harmoniously together. Even with its ablest men conferring together concerning the nature of such an organization and the means of securing it, the state will not have cause for more than an ordinary amount of jubilation, for the creation of new and smoothly working arrangements in a complicated society is not an easy task or quickly to be achieved. The suggestion is hardly more than of an enlightened utilitarianism, broadly interpreted. Yet it is for an attitude and a procedure fundamentally different from that of the convention of 1878-79, where in the framing of measures concessions were made by one interest to another not from any broad-minded conception of common welfare, but from the practical necessity of trading support on one measure in order to receive it on another.

The confusion and waste which exist in the present political organization of the state are widely known. The need for simplification is widely recognized. In large part this cluttered-up arrangement is due to the fact that so many prohibitions and so many specific directions were included in the constitution which by amendment or otherwise it has been expedient to evade in later years. It was unfortunate that the constitution contained so much statutory material, that the details of problems were not left to be worked out in a more flexible manner later on. However, it must be remembered that the delegates were striving to solve permanently problems which the existing political organizations had refused or neglected to solve. They were the representatives of an outraged people who demanded that they get immediate results. Perhaps, indeed, in view of the disturbances of the times, the opportunity for constructive statesmanship had passed. Instead of having time for calm reflection they had to say yes or no to the demands of their constituents. A convention held in the first half of the decade, with the sympathetic and energetic interest of citizens from all groups, should have functioned much more happily. It is to be hoped that the new convention will be held in calmer times, that the new constitution will contain more of vision and less of narrow mandate, and that the statesmen who frame it will further aid in the creating of legislation which will apply its provisions directly to the needs of the people.

NOTES *and* SOURCES

NOTES AND SOURCES

Chapter I — BACKGROUND

1. Tenth Census, XIII, 299.
2. Henry George, *Progress and Poverty* (25th ed.), p. 299.
3. J. S. Hittell, *History of San Francisco* (1878), p. 401.
4. Ibid., p. 488.
5. Ibid., p. 417.
6. Ibid., pp. 423-24.
7. Ibid., p. 424.
8. Tenth Census, XIII, 299.
9. Mary Cone, *Two Years in California,* (1876) pp. 102-3.
10. Hittell, *History of San Francisco,* p. 422.
11. Sacramento *Bee,* Jan. 14, 1878.
12. Harris Newmark, *Sixty Years in Southern California* (1st ed. 1916, 2nd. ed. 1926, Pagination the same), p. 507.
13. Henry George, *Progress and Poverty,* p. 78.
14. J. S. Hittell, *Resources of California* (1874), p. 217.
15. Charles Loring Brace, *The New West* (1869), p. 62.
16. See below. chapter IV.
17. Hittell, *History of San Francisco,* p. 403.
18. Ibid., p. 450.
19. Ibid., pp. 406-15; Newmark, *Sixty Years in Southern California,* p. 478; B. C. Wright, *Banking in California* (1910) p. 109.
20. Wright, *Banking in California,* p. 156.
21. *Commercial and Financial Chronicle,* Jan. 17, 1880, p. 54.
22. Hittell, *History of San Francisco,* p. 424.
23. Ibid, pp. 415-16.
24. W. J. Davis, *Political Conventions in California* (1893), pp. 323-4.
25. Hittell, *History of San Francisco,* pp. 398-9.
26. *Alta,* Sept. 24, 1877.
27. Davis, *Political Conventions,* p. 367.
28. *Alta,* Nov. 6, 1877.
29. San Francisco *Chronicle,* Oct. 16, 1877.
30. Davis, *Political Conventions,* p. 370.
31. *Alta,* Nov. 1, 1877.
32. Ibid., Nov. 2, 1877.
33. Ibid., Nov. 6, 1877.
34. Ibid., Nov. 19, 1877. Kearney said in a letter to James Bryce in 1890 that the meetings were held at the sand lots because the city authorities had either hired all the halls or had intimidated the owners so that they would not rent them.— Bryce, *The American Commonwealth* (2nd ed., 1891), II, 749.
35. Ibid., Nov. 26, 1877.
36. Ibid., Dec. 24, 1877.
37. Ibid., Jan. 6, 1878.
38. Ibid., Feb. 4, 1878.
39. Ibid., March 17, 1878. See also other San Francisco and California papers for that or a some what later date.
40. *Alta,* March 20, 1878.
41. Ibid., March 25, 1878.
42. Oakland *Democrat,* quoted in *Alta,* March 25, 1878.
43. Quoted in *Alta,* March 25, 1878.
44. Quoted in *Alta,* March 25, 1878.
45. *Fitzgerald's Newspaper,* quoted in *Alta,* March 31, 1878.
46. *Golden Era,* quoted in *Alta,* April 1, 1878.

Chapter II — THE CHOICE OF DELEGATES

1. Los Angeles *Express,* Aug. 13, 1877.
2. Davis, *Political Conventions,* pp. 361-62.
3. *Express,* Aug. 2, 1877.
4. Ibid., Sept. 3, 1877.
5. *Statutes of California,* 1875-76, p. 791.
6. *Express,* Sept. 3, 1877.
7. T. B. McFarland, in the constitutional convention. See p. 862 of *Debates and Proceedings of the Constitutional Convention,* (1880-81) E. B. Willis and P. K. Stockton, Official Stenographers.
8. Sacramento *Bee,* Feb. 22, 1878.
9. Ibid., Feb. 18, 1878.
10. Ibid., March 2, 1878.
11. Ibid., March 2, and 9, 1878.
12. See Enabling Act, *Debates and Proceedings,* pp. 11-12.
13. *Alta,* April 11, 1878.
14. Some of the many organs favoring the non-partisan election of delegates were the Truckee *Republican,* Nevada City *Transcript,* Santa Rosa *Democrat,* Marysville *Appeal,* Sacramento *Record-Union,* Santa Rosa *Times,* Oakland *Times,* Los Angeles *Express,* Vallejo *Chronicle,* Napa *Register,* San Rafael *Journal.* For quotations see *Alta,* April 12 and 13, 1878.
15. *Alta,* April 15, 1878.
16. Ibid., April 18, 1878.
17. Davis, *Political Conventions,* pp. 381-83.
18. *Alta,* April 27, 1878.
19. Ibid, March 17, 1878.
20. Ibid, May 5, 1878; Davis, *Political Conventions,* p. 390.
21. *Alta,* May 27, 1878.
22. Ibid., May 12, 1878.
23. Sacramento *Bee,* May 12, 1878.
24. Ibid., May 22, 1878.
25. *Alta,* May 23, 1878.
26. *Bee,* May 20, 1878.
27. Ibid., April 24, 1878.
28. Perhaps the most ably edited papers were the San Francisco *Alta California,* self-styled and generally known as the *Alta,* and the Sacramento *Record-Union.* The latter was commonly regarded as a railroad organ. The former was thoroughly conservative in its leanings.
29. *Bee,* April 24, 1878; San Francisco *Examiner,* April 26, 1878.
30. The San Francisco *Chronicle* came to be the leading newspaper in support of the workingmen movement. It was a strictly anti-corporation

paper, and was ably edited.
31. *Examiner,* May 15, 1878.
32. *Alta,* April 29, 1878.
33. Ibid., May 6, 1878.
34. Davis, *Political Conventions,* pp. 383-89.
35. Quoted in *Alta,* June 19, 1878.
36. See *Alta,* June 24, and *Record-Union,* July 2, 1878.
37. Byron Waters, a member of the legislature which passed the enabling act and later a member of the constitutional convention, stated to the writer that the delegates-at-large were provided for because it was believed that they would be conservative in their outlook, and would oppose the radical element.—Interview, Nov. 20, 1926.
38. G. M. Hardwick was elected as an independent, but died before the convention met.—Los Angeles *Express,* July 15, 1878. His occupation is not listed in Davis, *Political Conventions,* pp. 390-92, where the occupations of the other delegates are listed. It is obvious that many of the delegates had more than one occupation, and could be classified by other schemes than the one here used.
39. *Bee,* June 22, 1878.
40. *Alta,* June 13, 1878.
41. June 1, 1878.
42. Pp. 135-36 of *Biographical Sketches of the Delegates to the Convention to Frame a Constitution for the State of California,* T. J. Vivian and D. G. Waldron, editors and publishers.
43. Davis, *Political Conventions,* p. 353.
44. Terry was to have a dramatic career during the decade which followed the constitutional convention, and was finally to fall before the gun of a deputy marshal who shot to protect Justice Stephen J. Field from an assault by Terry.
45. *Biographical Sketches,* pp. 111-12.
46. Ibid., pp. 102-3.
47. *Record-Union,* April 12, 1879.
48. *Debates,* p. 85.
49. Ibid., p. 1404.
50. Z. S. Eldredge, *History of California* (1915), V., 431-32.
51. *Biographical Sketches,* pp. 51-52.
52. See, for example, the resolutions which he planned to send to the Spring Valley Water Company, above, p. 18.
53. Byron Waters, interview, Nov. 20, 1926.
54. *Biographical Sketches,* pp. 93-94.
55. *Debates,* p. 242.
56. *Biographical Sketches,* pp. 71-72.

Chapter III — Organizing the Convention

1. *Bee,* Aug. 20, 1878.
2. Ibid., Sept. 28, 1878.
3. *Record-Union,* Sept. 30, 1878.
4. Ibid., Sept. 30, 1878.
5. Ibid., Sept. 30, 1878.
6. Byron Waters, interview, Nov. 20, 1926.
7. *Express,* Sept. 30, 1878; ibid., Aug. 2nd and Sept. 3, 1877; see above, pp. 22-23.
8. In his speech as president of the State Agricultural Society, Sept. 17, 1878, he praised the beneficent achievements of the railroads in California: "All honor to Leland Stanford, to C. P. Huntington, to Charles Crocker, to Mark Hopkins, I say, and to those who are left, I wish from the bottom of my heart all profit, too, for the plain reason that they deserve it."—*Record-Union,* Sept. 18, 1878.
9. *Express,* Oct. 1, 1878.
10. Ibid., Oct. 3, 1878.
11. *Record-Union,* Sept. 30, 1878.
12. *Debates,* p. 17.
13. *Biographical Sketches,* pp. 39-40.
14. Ibid., pp. 71-72.
15. *Debates,* p. 18.
16. Ibid., pp. 18-19.
17. Ibid., p. 19.
18. Ibid., p. 19.
19. Ibid., p. 21.
20. Article six, section sixteen.
21. Article eleven, section two.
22. *Express,* Nov. 30, 1878.
23. *Debates,* p. 35.
24. *Record-Union,* Oct. 4, 1878.
25. *Debates,* p. 37.
26. Ibid., pp. 49ff.
27. Byron Waters, interview, Nov. 20, 1926. See *Debates,* pp. 49-50.
28. *Express,* May 16, 1878.
29. *Debates,* p. 56.
30. Ibid., p. 56.

Chapter IV — Corralling Corporations

1. The history of the railroads of California down to the time of the constitutional convention is a long story in itself. Only such summary will be given here as seems essential to an understanding of the conditions that led to the actions which were taken or attempted in the convention. For reference see Stuart Daggett, *History of the Southern Pacific* (1922).
2. The way in which the Central Pacific gradually absorbed most of the smaller lines of the state is fascinating as a political as well as an economic study. See Daggett as above cited.
3. Colton joined the group much later than the other four.
4. Daggett, *History of the Southern Pacific,* p. 140.
5. Ibid., p. 3.
6. Ibid., p. 61.
7. For an account of the relationship between the Southern Pacific and the Central Pacific see *Colton v. Stanford,* 82 Cal. 351.
8. *Record-Union,* semi-weekly edition, Jan. 25, 1879.
9. Daggett, *History of the Southern Pacific,* p. 146. The Central Pacific paid an eight per cent dividend on stock paid in for the year ending June 30, 1877. The net earnings of other broad gage roads for the year were only $114,403.74. The narrow gage roads operated at a net less of $83,-702.74.—"Report of the Board of Commissioners of Transportation," p. 4.
10. See discussion in *Colton v. Stanford,* 82 Cal. 351.
11. Ibid.
12. Report of the commissioner of transportation to the constitutional convention.—*Debates,* p. 586.
13. Daggett, *History of the Southern Pacific,* p. 129.
14. Debates, p. 586.

15. Newmark, *Sixty Years in Southern California,* p. 503.
16. Ibid., p. 489.
17. Ibid., p. 489.
18. *Express,* Sept. 14, 1877.
19. Newmark, *Sixty Years in Southern California,* p. 504.
20. Ibid., pp. 506-7; see reference to this threat in the *Express,* March 28, 1879.
21. *Express,* Sept. 14, 1877.
22. Newmark, *Sixty Years in Southern California,* p. 521.
23. *Express,* Sept. 13, 1877.
24. Newmark, *Sixty Years in Southern California,* pp. 506-7.
25. "Report of the Board of Commissioners of Transportation," p. 11.
26. *Debates,* p. 385.
27. *Express,* Oct. 3, 1877. The *Express* thereafter printed railroad time tables free of charge for the convenience of patrons. The San Francisco *Chronicle* later lost railroad, steamer and ferry advertising because of its policies.—*Argonaut,* March 22, 1879.
28. *Record-Union,* semi-weekly edition, Oct. 5, 1878.
29. G. H. Tinkham, *History of Stockton* (1880), p. 353 (D. S. Terry was chairman of the meeting.)
30. "Report of the Board of Commissioners of Transportation," pp. 326-27.
31. Tinkham, *History of Stockton,* p. 356.
32. Ibid., p. 351.
33. *Stockton and Visalia Railroad* v. *Stockton,* 51 Cal. 329.
34. Tinkham, *History of Stockton,* p. 358.
35. "Report of the Board of Commissioners of Transportation," pp. 26-27.
36. *Debates,* p. 586.
37. Ibid., p. 586.
38. 94 U. S. 113.
39. *Record-Union,* semi-weekly edition, Oct. 5, 1878.
40. Daggett, *History of Southern Pacific.* p. 454. For a dramatic account of popular attitudes toward the railroads see *The Octopus* (1928), by Frank Norris.
41. Davis, *Political Conventions,* pp. 290, 294.
42. Ibid., p. 299.
43. Ibid., p. 308.
44. Ibid., p. 327.
45. Ibid., pp. 323-24.
46. Ibid., p. 332.
47. *Statutes of California,* 1873-74, p. 26.
48. Davis, *Political Conventions,* pp. 343-44.
49. Ibid., pp. 337-40.
50. Ibid., p. 351.
51. *Statutes of California,* pp. 783-91.
52. Ibid, pp. 783-91.
53. "Report of the Board of Commissioners of Transportation," pp. 1-3.
54. Ibid., pp. 2-3.
55. Ibid., pp. 20-21.
56. Ibid., pp. 20-21.
57. Ibid., p. 9.
58. Ibid., p. 15.
59. Ibid., pp. 171, ff.
60. Quoted in Bancroft's *History of California,* VII, 627, note, from page 7546 of evidence in *Colton* v. *Stanford,* 82 Cal. 351.
61. *Bee,* April 2, 1878.
62. *Alta,* March 30, 1878.
63. *Chronicle,* April 19, 1878.
64. *Statutes of California,* 1877-78, p. 969.
65. *Record-Union,* semi-weekly edition, Jan. 1, 1879.
66. See speech of J. S. Hager, *Debates,* 485.
67. *Debates,* p. 76.
68. He was speaker of the assembly for the term of 1874-75, serving as a member of the independent, anti-railroad party.—Davis, *Political Conventions,* p. 334.
69. *Debates,* p. 87.
70. Ibid., pp. 489, ff.
71. Ibid., p. 87.
72. The names of two of the original appointees did not appear on any of the reports of the committee. They were probably transferred to some other committee after the addition of the members from Los Angeles. They were virtually "silent members" in the convention, and their loss probably had no great significance for the committee.
73. *Biographical Sketches,* pp. 153-54.
74. *Debates,* p. 235.
75. Ibid., p. 361.
76. Ibid., pp. 377 ff; see statement of Henry Edgerton, p. 489.
77. 90 U. S. 113.
78. He illustrated by saying, "The other day I looked at the report of the committee appointed by the New York legislature in eighteen hundred and seventy-four to investigate the operation of the Erie road. They brought before that committee that great magnate Jay Gould, and they asked him many questions which he answered with a frankness that none could help but admire, even if it was an outrageous admission. When asked what a charge meant for over one million twelve hundred thousand dollars to the India rubber account, he said, 'Why, that is our legislative expenses.' In other words, 'India rubber account' in the Erie books means legislative expenses." *Debates,* pp. 379-80.
79. *Express,* Nov. 12, 1878.
80. *Debates,* p. 362.
81. Ibid., p. 386.
82. Ibid., pp. 384-85.
83. Ibid., p. 385.
84. Ibid., pp. 385-86.
85. Ibid., pp. 386-87.
86. Ibid., p. 386.
87. Ibid., p. 388. Dr. C. C. O'Donnell, workingman, defined the term "corporation," as used in the state, to mean "A corrupt combination of individuals, formed together for the purpose of escaping individual responsibility for their acts."
88. *Debates,* p. 388.
89. Ibid., p. 396.
90. Ibid., p. 407; see also Terry, p. 404; Freeman, pp. 397, 406; and Moreland, p. 410.
91. Ibid., p. 397; see also Wyatt, p. 397; and Freud, p. 410.
92. Lindow, *Debates,* p. 399.
93. Dowling, *Debates,* p. 402.
94. Reynolds, *Debates,* p. 412.
95. *Debates,* p. 396.
96. Ibid., p. 407.

97. Ibid., pp. 400-401.
98. Ibid., p. 398.
99. Ibid., pp. 404-5.
100. Ibid., p. 406.
101. Ibid., p. 405.
102. Ibid., p. 418.
103. *Express,* Nov. 18, 1878.
104. *Debates,* pp. 418-53.
105. Ibid., p. 453.
106. Ibid., p. 453.
107. Ibid., p. 454.
108. Ibid., p. 454.
109. Ibid., p. 455.
110. Ibid., p. 456.
111. Ibid., p. 456.
112. Ibid., p. 463.
113. See "Report of Board of Transportation Commissioners," pp. 20-21.
114. *Debates,* p. 468.
115. Ibid., p. 468.
116. See speech of Volney E. Howard, *Debates,* p. 480.
117. *Debates,* p. 468.
118. Ibid., p. 471.
119. Ibid., p. 473.
120. Ibid., pp. 474-75.
121. Ibid., p. 516.
122. Ibid., p. 515. Referred to in the debates as section nineteen.
123. Ibid., p. 545. Referred to in the debates as section twenty.
124. Said D. S. Terry, "I do not propose to give, by my vote, to any triumvirate the power that is proposed to be given to three commissioners in the state of California. If they would give me the appointment of the commission, I do not know where I could find three men that I would be willing to trust so far. It is against the principle of the Lord's Prayer. These men are being led into temptation which they would be more than men if they could withstand."—*Debates,* p. 472.
125. S. M. Wilson offered an amendment proposing the appointment of a commission by the governor, with the advice and consent of the senate. "I am in favor of allowing the legislature to prescribe its power."—*Debates,* p. 571.
126. See the *Express,* Dec. 6, 1878.
127. *Debates,* p. 624.
128. *Argonaut,* Dec. 7, 1878.
129. *Record-Union,* semi-weekly edition, Dec. 11, 1878.
130. *Debates,* pp. 1199-1237.
131. Ibid., p. 1220.
132. Ibid., p. 1223.
133. Ibid., p. 1227. The letter mentioned was written by Leland Stanford to the San Francisco *Call,* and published therein in the edition of Nov. 3, 1878. (See reprint in the *Record-Union,* semi-weekly edition, Nov. 6, 1878.) Copies were placed on the desks of the delegates in the constitutional convention. It was an argument against the feasibility of state regulation of railroads. See references to the letter in the *Debates* at pages 454, 502, 567, and 1227.
134. *Debates,* p. 1231.
135. Ibid., p. 1237.
136. Ibid., p. 1433.
137. Section thirty-three of the article on the legislative department directed the legislature to pass laws for the regulation and limitation of charges and services of certain corporations not provided for in the article on corporations. For a discussion of the article on taxation see next chapter.

Chapter V — The Burden of Taxation

1. Article eleven, section thirteen.
2. For a history of California legislation on the subject see William C. Fankhauser, *A Financial History of California,* in *University of California Publications in Economics* (1913), Vol. 3, No.2. pp. 101-408.
3. *Statutes of California,* 1852, p. 20.
4. 17 *California Jurisprudence,* 1079.
5. C. C. Plehn, "The Taxation of Mortgages in California," *Yale Review,* May, 1899, p. 35.
6. 16 Cal. 167.
7. *People* v. *McCreery,* 34 Cal. 447.
8. *Lick* v. *Austin,* 43 Cal. 590.
9. *Statutes of California,* 1869-70, p. 584.
10. Ibid., p. 710.
11. *People v. Eddy,* 43 Cal. 331.
12. For further details see Fankhauser, *A Financial History of California.*
13. *Statutes of California,* 1869-70, p. 714.
14. Plehn, "Taxation of Mortgages in California," *Yale Review,* May 1899, p. 35.
15. Ibid, p. 36.
16. "Report of the State Board of Equalization," 1872-73, p. 15.
17. For further details see both Plehn and Fankhauser, as cited.
18. *Savings and Loan Society* v. *Austin,* 46 Cal. 415, 496.
19. *People* v. *Hibernia Bank,* 51 Cal. 243. The successful attack against the state board of equalization was in *Houghton* v. *Austin,* 47 Cal. 646 (Jan. 1874).
20. In *Savings and Loan* v. *Austin,* 45 Cal., 415, 520.
21. 51 Cal. 243, 250.
22. Davis, *Political Conventions,* p. 294.
23. Ibid., p. 299.
24. Ibid., p. 333.
25. Ibid., pp. 352, 340.
26. Ibid., p. 348.
27. Ibid., p. 354.
28. Ibid., p. 380.
29. Ibid., pp. 385-86.
30. "Report of the Committee on Land Monopoly," 1871-72, *Appendix to the Journals of Senate and Assembly,* 19th session, vol. 2, p. 4.
31. *Chronicle,* April 7, 1879.
32. *Express,* July 13, 1877.
33. "Report," p. 11.
34. *Argonaut,* June 8, 1878.
35. Hugh Quigley, *The Irish Race in California and on the Pacific Coast* (1878), p. 148.
36. Ibid., p. 148.
37. A. N. Young, *The Single Tax Movement in the United States* (1916), pp. 55 ff. Henry George was a democratic candidate for delegate to the constitutional convention from San Francisco, but was defeated. He had been offered the work-

ingmen nomination also. but the offer was withdrawn because he refused to bind himself to act with the party. See Henry George, Jr., *Life of Henry George* (1900), pp. 298-300.
38. E. g., see the issue of Sept. 30, 1878.
39. His statement, *Debates*, p. 464.
40. *Debates*, p. 837.
41. Ibid., pp. 837-38.
42. Ibid., p. 839.
41. Ibid., pp. 837-38.
42. Ibid., p. 839.
43. Ibid., p. 841.
44. Ibid., p. 842.
45. Plehn, "Taxation of Mortgages in California," *Yale Review*, May, 1899, pp. 45-46.
46. *Debates*, p. 845.
47. Ibid., p. 845.
48. Ibid., p. 846.
49. Ibid., pp. 848, 850.
50. Ibid., pp. 852-3.
51. Ibid., p. 855.
52. Ibid., p. 857.
53. Ibid., pp. 858-9.
54. Ibid., p. 859.
55. Ibid., p. 860.
56. Ibid., p. 861.
57. But see above, p. 17.
58. *Debates*, pp. 862-63.
59. Ibid., pp. 853-54.
60. Ibid., p. 883.
61. Ibid., p. 886.
62. *Record-Union*, semi-weekly edition, Jan. 8, 1879.
63. Ibid., p. 905.
64. Ibid., p. 879.
65. Ibid., p. 907.
66. Ibid., p. 907.
67. Ibid., p. 910.
68. Ibid., p. 908.
69. See Fankhauser, *Financial History of California*, pp. 299-310.
70. *Debates*, p. 910.
71. Ibid., p. 914.
72. Ibid., p. 916.
73. Ibid., p. 916.
74. Ibid., p. 917.
75. Ibid., p. 917.
76. Ibid., p. 919.
77. Ibid., p. 919.
78. Ibid., p. 919.
79. Ibid., p. 920.
80. Ibid., p. 921.
81. Ibid., p. 922.
82. Ibid., p. 924.
83. Ibid., p. 934.
84. Ibid., p. 936.
85. Ibid., pp. 937-39. It seems highly probable that such men as Edgerton and Shafter had this possibility in mind when they gave support to the measure.
86. *Debates*, p. 938.
87. Ibid., p. 940.
88. Ibid., p. 940.
89. Ibid., p. 944.
90. Ibid., pp. 944-45.
91. Ibid., p. 943.
92. Ibid., p. 945.
93. Ibid., p. 948.
94. *Record-Union*, semi-weekly edition, Jan. 11, 1879.
95. *Debates*, p. 1296.
96. Ibid., p. 1312.
97. Ibid., p. 1329.
98. Ibid., p. 1331.
99. Ibid., p. 1331.
100. Ibid., p. 1471.
101. Ibid., p. 1472.
102. Article four, section twenty-five.
103. Article eleven, section ten.
104. Article eleven, section twelve.

Chapter VI — THE CHINESE

1. *Bee*, Aug. 20, 1878.
2. *Debates*, p. 77.
3. *Biographical Sketches*, p. 149.
4. *Debates*, pp. 628-33.
5. *Chy Lung* v. *Freeman*, 93 U. S. 279.
6. *Argonaut*, Aug. 9, 1879.
7. See the Queue Case, *Ho Ah Kow* v. *Nunan*, 5 Sawyer, 552. See also Justice Field's letter to John F. Miller which was published in the San Francisco *Call* March 21, 1880. An account of his participation in the anti-Chinese controversies will be included in my biography of Stephen J. Field.
8. *Debates*, p. 628.
9. Ibid., p. 630.
10. Ibid., p. 630.
11. For example, he gave great weight to the minority opinion of Chief Justice Taney in the *Passenger Cases*, 17 Curtis, 219.—*Debates*, p. 635.
12. Referring to the days before hydraulic mining filled the river with yellow mud.
13. *Debates*, p. 637.
14. Ibid., p. 667.
15. On the other hand, see the protestations of concern on the part of S. M. Wilson, *Debates*, pp. 681-86. However, the reader is tempted to believe that he is "speaking to the galleries."
16. See statement of S. M. Wilson, *Debates*, pp. 681-82.
17. *Debates*, p. 73.
18. Ibid., p. 677.
19. 94 U. S. 113.
20. *Debates*, p. 681.
21. Ibid., p. 690.
22. Ibid., p. 690.
23. Ibid., p. 690.
24. Ibid., p. 729.
25. Ibid., pp. 1428-1431.
26. Ibid., p. 739.
27. Ibid., p. 756.

Chapter VII — LESSER PROBLEMS

1. *Debates.*, pp. 237-43.
2. Ibid., pp. 242-43.
3. See discussion, *Debates*, pp. 318-43.
4. *Debates*, p. 318.
5. Ibid., pp. 324-25.
6. Ibid., p. 329.
7. Ibid., p. 338.
8. Ibid., p. 1178.
9. Ibid., p. 325.
10. See discussion, *Debates*, pp. 1004-1016.

11. *Debates,* p. 1016.
12. Ibid., p. 1271.
13. See speeches of W. F. White, G. A. Johnson, and others, *Debates,* pp. 742 ff.
14. *Debates,* p. 1246.
15. Statement of Henry Edgerton, *Debates,* p. 1456.
16. See section two of the article, *Debates,* p. 949.
17. *Debates,* p. 1454.
18. Ibid., p. 953.
19. Ibid.,p. 950.
20. Ibid., p. 956.
21. Ibid., p. 957.
22. Ibid., pp. 1453-54.
23. Ibid., p. 1462.
24. See discussion, *Debates,* pp. 1086-1130.

Chapter VIII — The Constitution Before the People

1. *Debates,* p. 880.
2. Ibid., p. 904.
3. *Record-Union,* Jan. 9, 1879.
4. *Express,* Jan. 8, 1879.
5. *Chronicle,* Jan. 10, 1879.
6. Ibid., Jan. 15, 1879.
7. *Record-Union,* Jan. 20, 1879.
8. *Debates,* p. 1521.
9. Ibid., p. 1524.
10. *Express,* Feb. 19, 1879.
11. Including the *Record-Union,* which the *Chronicle* delighted to refer to as the "Stanford organ, circulation about 1750."
12. *Chronicle,* March 24, 1879.
13. Ibid., April 19, 1879.
14. For example, the issue of Feb. 3, 1879.
15. *Record-Union,* March 22, 1879.
16. *Chronicle,* Feb. 3, 1879.
17. *Express,* March 12, 1879.
18. *Record-Union,* April 3, 1879.
19. Ibid., April 5, 1879.
20. Ibid., April 5, 1879.
21. Ibid., April 5, 1879. "The San Francisco *Price Current* has published a list of banks in that city whose taxable property under the new constitution will by its operation be at once increased from six to seventy-two millions."—The *Nation,* May 15, 1879, p. 328.
22. *Record-Union,* April 8, 1879.
23. *Chronicle,* March 13, 1879.
24. Ibid., March 16, 1879.
25. Ibid., April 19, 1879.
26. Ibid., April 22, 1879.
27. Ibid., April 17, 1879.
28. *Express,* April 1, 1879.
29. *Argonaut,* March 8, 1879. A week later the *Argonaut* said, "It is the work of a clamorous mob of ignorant foreign miscreants, who desire to destroy the government in order that opportunity may be afforded them to plunder. It is an attempt of the propertyless minority to plunder the accumulations of industry."
30. Henry George, "The Kearney Agitation in California," *Popular Science Monthly,* August, 1880, pp. 445-46. James Bryce was told that some of the worst provisions were not attacked by the conservative delegates, because of the hope that they would bring defeat at the polls.—*American Commonwealth* (1891), II, 399.
31. *Chronicle,* March 3, 1879.
32. *Record-Union,* March 12, 1879.
33. Ibid., April 8, 1879.
34. Bryce, *American Commonwealth* (2nd edition), II, 750. Kearney wrote the letter in protest against Bryce's treatment of "Kearneyism" in his first edition.
35. *Express,* March 21, 1879.
36. Ibid., March 24, 1879.
37. *Record-Union,* April 14, 1879.
38. Statement of *Express,* March 13, 1879.
39. *Record-Union,* March 11, 1879.
40. *Express,* April 11, 1879.
41. *Record-Union,* May 3, 1879.
42. J. J. Ayres, *Gold and Sunshine* (1922), pp. 306-7.
43. Other delegates must have taken part in the struggle. Those named here are men whose names appeared prominently in the press at the time.
44. Henry George, "Kearney Agitation in California," *Popular Science Monthly,* August, 1880, p. 446.
45. J. P. Young, *San Francisco, a History of the Pacific Coast Metropolis* (1912), p. 446.
46. *Chronicle,* April 22, 1879.
47. Ibid., April 22, 1879. On March 8th the *Record-Union* published an article entitled "Legislating Poor Men out of Employment," in which it held that under the new constitution poor men could not be officers in corporations, since they would not be able to give the heavy security that would be necessary.
48. *Chronicle,* March 14, 1879, reprinted from the *Record-Union.*
49. Ibid., March 14, 1879.
50. *Record-Union,* March 13, 1879.
51. *Express,* March 18, 1879.
52. *Record-Union,* March 27, 1879.
53. *Express,* April 5, 1879.
54. *Record-Union,* March 24, 1879.
55. *Express,* April 18, 1879.
56. Ibid., April 24, 1879.
57. *Record-Union,* March 19, 1879.
58. Davis, *Political Conventions,* p. 393.
59. Young, *San Francisco,* p. 548.
60. Ibid., p. 548.
61. *Record-Union,* May 5, 1879.
62. Ibid., May 23, 1879.
63. *Commercial and Financial Chronicle,* May 24, 1879, pp. 515-17.
64. Henry George, "Kearney Agitation in California," *Popular Science Monthly,* August, 1880, p. 446.

Chapter IX — Conclusions

1. See the platforms in Davis, *Political Conventions,* pp. 393-417.
2. "New constitution" platform, Davis, *Political Conventions,* p. 411.
3. T. H. Hittel, *History of California* (1885-'97), IV, 679.
4. Article twelve, section twenty.
5. For a summary of events see Fankhauser, *Financial History of California,* pp. 299-310.
6. See *San Francisco and Northern Pacific Railroad Co. v. State Board of Equalization,* 60 Cal. 12 (Jan. 1882), and *Central Pacific Railroad Company* v. Same, 60 Cal. 35 (Jan. 1882).

7. *San Mateo County* v. *Southern Pacific Railroad Company,* 13 Fed. 722 (Sept. 25, 1882).
8. The story of Justice Field's interest in the situation will be told in my biography of Stephen J. Field.
9. Fankhauser, *Financial History of California,* p. 301.
10. Ibid., pp. 303-4.
11. *Wells, Fargo Co.* v. *State Board of Equalization,* 56 Cal. 194 (Sept. 1880).
12. Plehn, "Taxation of Mortgages in California," *Yale Review,* May, 1899.
13. Article four, section thirty-five.
14. T. H. Hittell, *History of California,* IV, 654.
15. Gertrude Atherton, *California,* pp. 306-7.
16. Bryce, *American Commonwealth,* II, 389.

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